

(2013) 09 PAT CK 0105

PATNA HIGH COURT

Case No: Testamentary Case No.5 of 2011 (In the matter of an application under section 276 of the Indian Succession Act 1925 for grant of probate)

Late Ranjeet Bahadur Singh

APPELLANT

Vs

Arvind Kumar Singh

RESPONDENT

Date of Decision: Sept. 12, 2013

Citation: (2013) 4 BLJud 231

Hon'ble Judges: Kishore Kumar Mandal, J.

Bench: Single Bench

Advocate: for the Petitioners : Mr. Shashi Bhushan Prasad, Advocate.

Final Decision: Allowed

Judgement

Kishore Kumar Mandal, J. (Oral)—Present is the application filed under section 276 of the Indian Succession Act to grant probate of the Will dated 08.08.2006 appended to the application executed by Late Ranjeet Bahadur Singh (testator) in favour of the applicant.

2. It has been stated that the testator was an Ex. Member of the Bihar Legislative Council and in that capacity the testator was allotted a piece of land by the Bihar Sansad Evam Vidhan Mandaliya Sadasya Grih Nirman Samiti Ltd. Patna bearing sub plot no.156 situated at Mauza-Salempur Dumra Thana-Phulwari Thana No.10 at present known as Kautilya Nagar, P.S. Airport in the district of Patna measuring a total area of 2415 sq.ft. During his life time the testator, after allotment of the said plot, constructed a house thereon in which he was living till his death. The details of the said property have been fully described in Schedule-1 of the application. The applicant and his wife being son and daughter-in-law of the testator looked after the testator in best possible manner inasmuch as all comforts were provided to the testator during his life time. Pleased with the services rendered by the applicant, the testator executed a registered Will during his life time in respect of the property detailed in Schedule-1 on 8th of August, 2006 in favour of the present applicant. The Will was executed in presence of the witnesses namely Shri Ajit Kumar Singh (eldest

son of the testator) Ram Bahadur Singh, Kamal Nath Singh Thakur and Smt. Sunaina Singh (wife of the testator). The testator after execution of the Will died on 10.03.2009 at his residence at Ara leaving behind the applicant and his other family members. The applicant performed his list rites being the youngest son. It has further been stated that the applicant is the sole beneficiary under the Will and also the sole executor appointed under the aforesaid Will. The said Will was the last Will and testament of the testator. The testator had died leaving behind the applicant and other heirs and near relatives (NRs.), namely Smt. Sunaina Singh (the wife), elder son, namely, Shri Ajit Kumar Singh and two daughters, namely, Smt. Smriti Singh and Smt. Priti Singh. The applicant after the death of his father (the testator) came in possession over the said property mentioned in the Will and since then he is exercising all rights of ownership. A prayer has been made for grant of probate of the Will

3. General citations as well special citations were issued and published on 22.04.2012 in two newspapers, one in English "the Hindustan times" and another one in Hindi "Aaj", both published from Patna. Affidavit was filed placing on record the newspapers in which citations were published. No objection was filed by anyone including the near relatives (NRs.) of the testator. It is to be noted that NR-2 namely, Ajit Kumar Singh (one of the sons of the testator) appeared in the proceeding by filing Vakalatnama. Neither caveat nor any objection was filed on his behalf. Near relatives namely NR-1 (wife of the testator) NRs- 3 and 4 (the two daughters of the testator) have placed on record their affidavit(s) by post stating therein that they have no objection if the probate of the Will is granted in favour of the applicant. By order dated 6.7.2012 this Court accepted the affidavit(s) of NR 1, 3 and 4. An amendment petition seeking amendment of the main application was filed. The same was allowed on 06.07.2012 and the date of the execution of the Will was treated as 08.08.2006. This Court granted opportunity to NR-2 to file caveat and objection. No caveat and objection was filed on his behalf and as such this Court by order dated 21.02.2013 precluded him from filing caveat and objection.

4. The Will annexed to the application has been proved and marked Ext 1. To prove the Will the applicant has examined AW- 1 Ram Bahadur Singh who is one of the attesting witnesses of the Will. AW- 2 Kamal Nath Singh Thakur is another attesting witness of the Will, and AW-3 Arvind Kumr Singh is the applicant himself. Besides above, the affidavits filed on behalf of Smt. Smiriti Singh (daughter of the testator) and Smt. Priti Singh another daughter of the testator have been placed on record.

5. Before considering the evidence adduced on behalf of the applicant this Court would note that in the two affidavits filed on behalf of Smt. Smiriti Singh and Smt. Priti Singh, the daughters, have clearly stated that the applicant is their brother and the testator was their father. Before the death their father had executed the Will on 08.08.2006 in favour of their brother (Arvind Kumar Singh) in respect of plot acquired by the testator situated at Patna, details whereof have been set out in

Schedule-1 of the application. They claim to have identified the signature of their father on the Will. They have also stated that when the Will was executed the testator was in sound state of health and mind. He was suffering from no ailment. The attesting witnesses of the said Will were their mother and another brother namely Ajit Kumar Singh besides others. The witnesses had signed the Will. The Will executed by the testator is Ext. 1. AW-1 Ram Bahadur Singh is one of the attesting witnesses. In his deposition, he has stated that he knew the testator who had executed the Will during his lifetime. The Will (Ext.1) was executed in favour of his younger son Arvind Kumar Singh (applicant). Gauri Shankar Lal had typed the Will which was read by the testator and thereafter he signed the Will. The Will, as noticed above, has been marked as Ext. 1. This witness has proved the signature(s) of the testator on all the pages of the Will which have been marked as Ext. 2 to 2/2. This witness has further stated that he had signed the Will as attesting witness on the request made by the testator. Apart from him, Shri Kamal Nath Singh Thakur, wife of the testator namely Sunaina Singh and Ajit Kumar Singh (son of the testator) had also signed on the Will as witnesses. All of them had signed in his presence. When the Will was executed by the testator he was physically and mentally fit. He was in a sound mental condition. This witness has further stated that on request made by the testator his wife, Smt. Sunaina Singh, the eldest son Ajit Kumar Singh and Shri Kamal Nath Singh Thakur affixed their signatures on the Will in his presence. He has proved the signature(s) of Kamal Nath Singh Thakur, Smt. Sunaina Singh and Shri Ajit Kumar Singh on the Will which have been marked as Exts. 3, 3/1, 4, 4/1, 5 & 5/1 respectively.

6. AW-2 Kamal Nath Singh Thakur in his deposition has stated that the testator was his fellow member of the Legislative Council. The testator had executed the Will in the month of October or September, 2006. This witness corrected himself and thereafter stated that the Will was executed and signed in August, 2006 and that the testator had signed on the Will in his presence. Before affixing his signature on the Will he had read and understood the contents of the Will. He has also identified the Will (marked as Ext.1). This witness has further stated that apart from him the will was also signed by Ram Badaur Singh (who was an assistant in the Bihar Legislative Council), his wife and his son. This witness has identified/proved the signatures of the testator on each page of the Will. He has identified his signatures on the first and second page of the Will (marked Exts.3 and 3/1 respectively). This witness has further stated that the wife of the testator also signed the Will as the attesting witness. He has identified the signatures of Smt. Sunaina Singh on both the pages of the Will (marked as Ext. 4 & 4/1). Ajit Kumar Singh, son of the testator also signed as attesting witness. This witness has identified the signatures of Ajit Kumar Singh on both the pages of the Will (marked as Exts. 5 and 5/A). Ram Bahadur Singh (AW-1) also signed as an attesting witness on both the pages of the Will. This witness identified his signatures (marked as Ext. 6 and 6/1) on the Will. It has further been stated that when the Will was executed the testator was physically and mentally in

good health.

7. A.W. 3 is the applicant. He has stated that the statements made in the affidavit filed on his behalf are true. He has filed the present testamentary case for probate of the Will executed by his father who was a member of the Legislative council. In his capacity as a member of the Legislative Council he was allotted a plot in Kautilya Nagar in the township of Patna. The Will was executed in presence of his brother namely Ajit Kumar Singh and friends of his father(testator) namely Ram Bahadur Singh and Kamal Nath Singh Thakur. This witness has identified the signatures of the attesting witnesses on the Will which have already been marked as exhibits. He has stated that when the Will was executed by his father he was mentally and physical fit and sound. The testator died on 10.03.2009. This witness has further deposed that his mother had also signed the Will whose signatures on the Will are marked as Ext. 4 series. The Will was executed by the testator in his favour. There was no pressure and coercion by anyone on the testator to execute the Will in his favour. The execution of Will was on his own volition.

8. On perusal of Ext. 1 it appears that the Will was created on 08.08.2006. The testator signed on each page of the Will. The Will and the contents thereof have been proved by the witnesses. The two attesting witnesses in their respective depositions have supported the execution of the Will by the testator on the relevant date in favour of the applicant. It has further been proved that the Will was executed by the testator in favour of the applicant when the testator was in sound mental and physical condition. The details of the property bequeathed thereunder have been set out in the said Will which relate to sub plot no. 156 measuring an area of 2415 Sq.ft. which was allotted to the testator by the Bihar Sansad Evam Vidhan Mandaliya Sadasya Grih Nirman Samiti Ltd., Patna. The evidence led on behalf of the applicant further proves that the said Will was the last Will of the testator which was executed by the testator without any pressure or coercion. The execution of the Will was the voluntary act of the testator.

9. Having regard to the aforesaid this Court is satisfied that the applicant has successfully proved the Will and the execution thereof by the testator in his favour on his own free will which was attested by the two attesting witnesses as required by law. The Will (Ext.1) dated 08.08.2006 is a genuine Will and also the last Will of the testator.

10. In the circumstances, the prayer made in this application to grant probate of the last Will and Testament dated 08.08.2006 (Ext.1) in favour of the applicant is allowed. Let the probate annexing a copy of the last Will and Testament dated 08.08.2006 duly executed by the testator, Late Ranjeet Bahadur Singh be granted in favour of the applicant which shall have effect throughout the territory of India.