MISCELLANEOUS APPEAL No. 404 of 2015

[arising out of Judgment dated 20th day of July, 2015 passed by District Judge X, Hazaribag in Probate Case No.05 of 2007]

Ram Kumar Singh son of Daroga Singh, resident of Village Uraba, P.O. & P.S. Ramgarh, District Hazaribag **… Appellant**

-versus-

The State of Jharkhand through the Deputy Commissioner, Ramgarh, P.O., P.S. and Dist. Ramgarh. **… Respondent**

For the Appellant : Mr. Rajeev Ranjan Tiwary, Advocate
For the Respondents : Mr. Deepak Kumar Dubey, A.C. to AAG II

PRESENT
HON'BLE MR. JUSTICE ANANDA SEN

J U D G M E N T

Reserved on 19.04.2022 **Pronounced on 26.04.2022**

This is an appeal by the applicant under Section 299 of the Indian Succession Act, challenging the judgment dated 20th July, 2015 passed by the District Judge X, Hazaribagh in Probate Case No.5 of 2007, whereby he has dismissed the probate application filed by the applicant.

2. One Ram Kumar Singh filed a petition under Section 276 of the Indian Succession Act praying for grant of probate of the WILL dated 29.03.1995, executed by Most. Mutari, wife of Krishna Ganjhu in favour of the applicant-appellant. It is the case of the applicant that Most. Mutari was being looked after by the applicant, after the death of her husband, Krishna Ganjhu, as the couple did not have any child and there was no one in the family. The widow, thus, executed a WILL, bequeathing all the properties mentioned therein, in favour of the applicant. The WILL was unregistered. Most. Mutari died on 20.12.2006 and as there was no executor, the applicant filed an application for grant of probate.

3. The State was impleaded as respondent in the application.

4. The Court of the District Judge framed four issues, which were as follows: -

(1) Is the application maintainable?

(2) Whether the will was executed by Most. Mutari on 29.3.1995 bequeathing all her movable properties including lands under Khata no.4,37,49 and 66 of the village Urba thana no.169, P.S. Ramgarh, District Hazaribag in schedule 'A' of the application is valid?

(3) Is the properties in Schedule 'A' properly valued?

(4) Whether the applicant is entitled for grant of probate of the will or letters of administration in respect of the property detailed under Schedule 'A' of the application?

5. Four witnesses were examined on behalf of the applicant. P.W.1 was the applicant himself, P.W.2 was Narayan Singh, P.W.3 Ram Lagan Singh and P.W.4 was Akchaya Kumar Bakshi. Unregistered WILL was also marked as Exhibit 1.

6. Considering the evidence led by the parties, the Trial Court held that the WILL was not properly executed and the said document is not trust-worthy and is doubtful. Court also doubted the testimony of the witnesses, thus, concluded that the credibility of the witnesses are also doubtful. The Court, thus, dismissed the application filed by the applicant.

7. Aggrieved by the order dismissing the application filed by the applicant, the applicant-appellant has preferred the instant appeal.

8. Learned counsel appearing for the appellant submitted that there is no illegality in the WILL and the WILL cannot be doubted. He submitted that the WILL was executed in the year 1995, whereas the deceased died on 20.12.2006, i.e., after more than 11 years, which will justify the execution of the WILL. Since there were no legal heirs of the deceased and as the appellant was looking after the deceased, after the death of her husband, the deceased out of love and affection, had executed a WILL in his favour, thus, no fault can be found in such execution. As per him, one of the attesting witnesses and the scribe also deposed before the Court and they consistently deposed that it is the deceased, who came to the scribe and on her dictate the WILL was prepared, after that she had put her thumb impression. Witnesses categorically stated that they also put their signatures as attesting witnesses on the WILL, that being so, the findings of the Court below is absolutely erroneous. Another argument was forwarded that since the State did not file any written statement, they could not have contested the application and the Court should have accepted the averments made in the application. He argues that there is no mandate of law that the WILL should be registered and the Court below failed to consider that unregistered WILL also could be probated and thus, the findings of the Court that no effort was taken to get the WILL registered has got no legs to stand. He submitted that non-registration of the WILL cannot be

a ground to conclude that the execution of the said document is doubtful.

9. I have heard counsel for the parties and have gone through the Lower Court Records including the evidence led by the parties. Admittedly, the WILL is unregistered.

10. The Hon'ble Supreme Court in the case of ***Shivakumar & Others versus Sharanabasappa & Others (Civil Appeal No.6076 of 2009)***, after considering relevant decisions of the Hon'ble Supreme Court has culled out principles governing the process concerning proof of a WILL. The aforesaid principles have also been reiterated in the case of ***Kavita Kanvar versus Pamela Mehta & Others*** reported in ***2020 SCC OnLine SC 464*** at **paragraph 24.8** thereof, which reads as under:-

> ***24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No.6076 of 2009: Shivakumar v. Sharanabasppa, decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarized the principles governing the adjudicatory process concerning proof of a Will as follows:-***
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> ***1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.***
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> ***2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.***
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> ***3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.***
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> ***4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.***
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> ***5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be***

> ***proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.***
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> ***6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind'.***
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> ***7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.***
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> ***8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?***
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> ***9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.***

11. The Hon'ble Supreme Court, in the case of ***Smt. Jaswant Kaur versus Smt. Amrit Kaur,*** reported in ***(1977) 1 SCC 369***, at paragraph 9 thereof, has held as follows:-

> ***9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.***

12. If there are any suspicious circumstances, onus is on the propounder to explain those circumstances to the satisfaction of the

Court and after being fully satisfied about the explanation, the Court should pass an order in granting probate of the WILL. Even in absence of any plea of fraud, coercion or undue influence in relation to execution of the WILL, but, if there are circumstances, which gives rise to doubt about the genuineness of the WILL, it is for the propounder to satisfy the conscience of the Court. The onus is upon the propounder. Thus, at the execution of the WILL, all the circumstances surrounding the said WILL should be above suspicion and each and every bit of doubt must be explained properly by the propounder. From the judgments referred to above, it is clear that if there is strong suspicion against the genuineness of the WILL and if there are any circumstance to point that there are grounds of some doubt in execution of the said WILL by the testator, the Court can refuse grant of probate.

13. Considering the aforesaid proposition of law, now let me consider the facts of this case.

14. The WILL is dated 29.03.1995 and the same is unregistered. The WILL has been exhibited as Exhibit 1. The said document contains thumb impression of the executor Most. Mutari, two attesting witnesses are Narayan Singh (P.W.2) and Fauda Gaunjhu. Ram Lagan Singh (P.W.3) identified Most. Mutari and her thumb impression. Akchaya Kumar Bakshi (P.W.4) is the scribe of the said WILL.

15. When I go through the evidence, I find that Akchay Kumar Bakshi (P.W.4), who is the scribe, has stated in his examination-in-chief that WILL was prepared on the directions of Most. Mutari in favour of the applicant and it is he who has scribed the said WILL. He stated that he read over the contents of the WILL to Most. Mutari and Most. Mutari, after understanding the contents written in the WILL, had put her Left Thumb Impression in presence of Ram Lagan Singh and witnesses Narayan Singh and Fauda Gaunjhu. In cross examination at paragraph 8, this witness states that he could not name any of the persons who accompanied Most. Mutari at the time of preparing the WILL, but, he states that he identified those persons as a witness to the WILL. He also could not say as to who signed as identifier and who were the attesting witnesses. He further stated that the document, which he had prepared, is not before him when he was deposing. He also stated that Mutari Devi is dead, but, he cannot say when she died.

16. P.W.2 is Narayan Singh, who states that he is illiterate, but he can sign. He states that he is witness to the WILL and states that Most. Mutari had executed the WILL, who is now dead. He stated that the WILL was executed in his presence and in presence of Fauda Gaunjhu and Akchaya Kumar Bakshi. He stated that Most. Mutari had no heir or successors and Akshay Kumar Bakshi is the scribe of the WILL. In cross examination, he stated that Ram Kumar Singh, who is the applicant herein, is his cousin and said Ram Kumar Singh has no relation with Most. Mutari, but, he he used to look after Most. Mutari. He stated that Most. Mutari had signed a paper in his presence, but, he does not know what was the contents of that paper. He stated that Ram Kumar Singh asked him to give evidence today in Court.

17. Ram Lagan Singh is P.W.3, who stated that Most. Mutari executed the WILL in favour of the applicant on 29.03.1995. Most. Mutari had no legal heir or successors. In paragraph 5, he has stated that as Most. Mutari had got no legal heir, she request Ram Kumar Singh to look after her and in lieu of such executed a WILL in his favour. He admits that the document contains his signature and the WILL was prepared by Most. Mutari in her senses. He states that after the death of Most Mutari, it is Ram Kumar Singh, who performed her last rites. In cross examination, he stated that Most. Mutari had no children nor any nephew or niece. He stated that at the time of death, the elder brother-in-law and younger brother-in-law of Most. Mutari was alive. He states that Fujar Gaunjhu is the younger brother-in-law of Most. Mutari, but he could not recollect the name of elder brother-in-law. He further states that there is one Chaita Gaunjhu, who is alive and belongs to the same family. In paragraph 9 of the cross-examination, he states that the WILL was scribed by Narayan Singh.

18. Ram Kumar Singh, the applicant, is P.W.1. He stated that Most. Mutari died on 20.12.2006 and they had no son or legal heirs. Her husband predeceased her. He stated that the WILL was prepared on 29.03.1995 and Narayan Singh and Fauda Gaunjhu were the witnesses and Akchay Kumar Bakshi is the scribe. In paragraph 8 of his examination-in-chief (which is a typed and affidavited document), he states that he is identifying the death certificate of Most. Mutari, which is to be marked. In paragraph 11, the WILL dated 29.03.1995 was marked as Exhibit 1. In cross examination, he stated that Most Mutari and he

belongs to the same caste and all the properties have been bequeathed in his favour. Exhibit 1 is the WILL.

19. From the aforesaid evidence, a discrepancy, which clearly emerges is that Akchay Kumar Bakshi states that he is the scribe of the WILL. The applicant also says the same, but, Ram Lagan Singh (P.W.3) in paragraph 9 of his cross examination has stated that it is Narayan Singh, who is the scribe of the WILL. Another important aspect is that the applicant in his examination-in-chief (which is a typed and duly affidavited document sworn by him) states that he is producing the death certificate of Most. Mutari, whereas when the entire record is placed before me, there is no death certificate in it. List of Exhibits was prepared by the Court below, which suggests that the said death certificate was neither produced nor exhibited.

20. Further, the witness Ram Lagan Singh stated that at the time of death of Most. Mutari, his brothers-in-law were alive and one of her family member, namely, Chaita Gaunjhu was also alive at the time when his deposition was recorded. Surprisingly, I find that though from the evidence of the witness, it is evident that there exists family members, who are agnates of the deceased testator, but, in the probate application, which was numbered as Probate Case No.5 of 2007, family members were not made a party. The applicant only made the Deputy Commissioner as party respondent and not any of the family members.

21. Further, I find that general notices were also not issued in the locality and notices were only sent to the State, which was represented by the Government Advocate. This is a circumstance, which strikes the conscience of the Court. It is not explained as to why agnates of the deceased, who were alive, have not been made a party nor general notices were issued in the locality.

Counsel appearing on behalf of the appellant also cannot give any proper explanation. This suggests that the claimant is trying to hide the existence of the WILL from the agnates.

22. Further the WILL, which was marked as Exhibit 1, was not produced before the Akchay Kumar Bakshi at the time of deposition, who claimed that he was the scribe of the WILL. This is also a circumstance, which creates a doubt in the mind of the Court as to why document was not produced before him. All the witnesses stated that Most. Mutari died in the year 2006, but, surprisingly, the death certificate of the deceased was not brought on record even though the applicant

says that he has produced the same. If at all there was a death certificate, which the applicant claims to be there, the same should have been brought on record to conclude as to when Most. Mutari died. Withholding of this documentary evidence creates a doubt in the mind of the Court as to whether actually the appellant looked after the deceased or not and performed her last rites or not. None of the villagers have been produced as witness to depose that infact this appellant looked after the deceased till her death and this deceased performed her last rites. It is the case of the appellant that since this appellant was looking after the deceased for a long period of time, so out of love and affection the WILL was executed. This fact of love and affection and the claim that this appellant looked after the deceased and performed her last rites have not been proved by any independent witness of the village. Further, one of the attesting witnesses, who was produced and examined before the Court as witness, (as the another one was not produced) is a cousin of the applicant. Further, Akchay Kumar Bakshi, clearly stated that he cannot identify any of the persons, who accompanied Most. Mutari at the time of scribing the WILL and he could not say, who verified the thumb impression of the testator.

23. Considering all these discrepancies, the District Judge X, Hazaribagh rejected the application holding that the witnesses are not trustworthy and there is doubt about the execution of the WILL. I also concur with the said finding. I find that no illegality has been committed by the Court below in rejecting the application and coming to the conclusion that there exists doubt about the execution of the said WILL.

24. Accordingly, this appeal is dismissed as there are no grounds to interfere with the judgment dated 20th July, 2015 passed by the District Judge X, Hazaribagh in Probate Case No.5 of 2007.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi,
Dated, the 26th April, 2022
AFR

Kumar/Cp-02