

IN THE HIGH COURT OF JUDICATURE AT PATNA

Shambhunath Singh and Others

vs.

Jawahar Singh and Others

FIRST APPEAL No.325 of 1982

29 March 2023

(Hon’ble Mr. Justice Rajeev Ranjan Prasad)

Issue for Consideration

Whether Plaintiff’s Revocation Case, filed against grant of Probate in favour of Defendant, was rightly dismissed?

Headnotes

Wills and Probate - Indian Succession Act, 1925 – section 263, 299 – appeal against judgment dismissing the Revocation Case filed by Plaintiff and refusing to interfere with the order granting probate in favour of Defendant no-1. – argument on behalf of Appellants that proper summons was not served and that the will in question is forged and fabricated document.

Held: as a prudent man the plaintiff should have gone through the records of the probate case and should not have merely contented himself by saying that the probate was obtained fraudulently - will in question is a registered document, therefore, there will be a presumption of the validity of the Act under Section 85 of the Evidence Act read with Illustration (e) of Section 114 of the Evidence Act - non-production of the will before the survey authorities cannot lead to any inference about its non-existence on the date it purports to have been executed - no reason to interfere with the impugned judgment – appeal dismissed. (Para – 17-20)

Case Law Cited

XXX

List of Acts

Indian Succession Act, 1925; Indian Evidence Act

List of Keywords

Wills and Probate ;Revocation of Probate ; Proper Citation ; Testamentary Capacity; Coparcenary Property ; Forged and Fabricated Document ; Attesting Witnesses ; Registered Document ; Presumption of Valid Execution ; Tenants in Common ; Joint Possession.

Case Arising From

Judgment dated 17th day of April, 1982 passed by learned District Judge, Saran, Chapra in Revocation Case No.10 of 1979.

Appearances for Parties

For the Appellant/s: Mr. Binod Kumar Singh, Advocate

For the Respondent/s: Mr. Nagendra Rai, Advocate

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.325 of 1982

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- 1.1. Shambhunath Singh Son of Late Ramsewak Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
 - 1.2. Tribhuwan Nath Singh Son of Late Ramsewak Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
 - 1.3. Sunaina Kuer D/o Late Ramsewak Singh, W/o- S.N. Singh Vill.- Sunaiwali, P.O.- Punaivali, P.S.- Kadwa, Distt.- Katihar.
 - 1.4. Munni Devi W/o R.U. Singh, D/o Late Ramsewak Singh Vill.- Baldiha, P.S.- Amnaur, Distt.- Saran.

... .. Appellants

Versus

- 1.1. Jawahar Singh Son of Late Ghinawan Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
- 1.2. Shankar Singh Son of Late Ghinawan Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
2. Satendra Singh, Son of Late Singar Chand Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
4. Subaso Devi, Daughter of Late Singar Chand Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.
5. Sushila Devi, Daughter of Late Singar Chand Singh Resident of Village- Thaharan Chand, P.O.- Maker, P.S.- Parsa, District- Saran.

... .. Respondents

Appearance :

For the Appellant/s : Mr.Binod Kumar Singh, Advocate
 For the Respondent/s : Mr. Nagendra Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

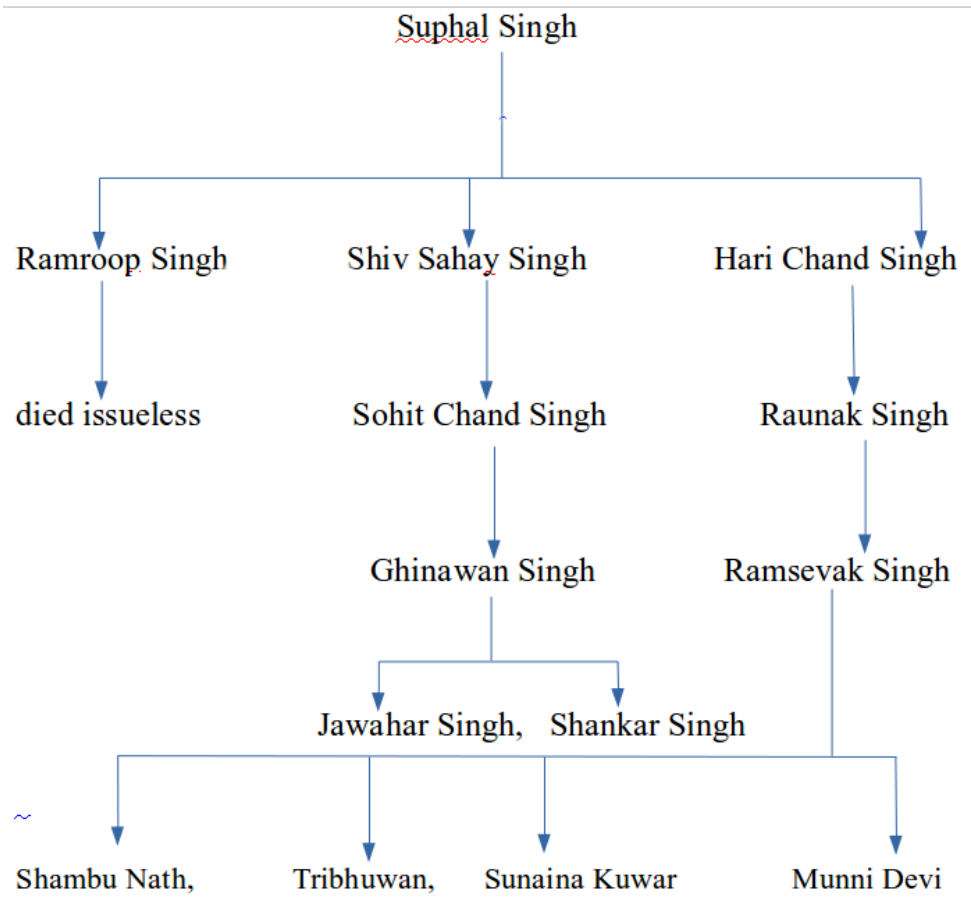
Date : 29-03-2023

This is an appeal preferred under Section 299 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act of 1925') for setting aside the judgment dated 17th day of April, 1982 passed by learned District Judge, Saran, Chapra in Revocation Case No.10 of 1979 (Ram Sevak



Singh Vs. Ghinawan Singh & Ors.). By the impugned judgment, the learned District Judge has been pleased to dismiss the suit arising out of an application filed by the plaintiff under Section 263 of the Act of 1925 and thereby refused to interfere with the order granting probate by the District Judge of Saran on 28.08.1928 in Probate Case No.110 of 1926 in favour of the father of defendant no.1.

2. In order to appreciate the dispute between the parties it would be relevant to state the genealogy of the parties as under:-



3. The facts of the case would reveal that wife of Ramroop Singh had pre-deceased him. Ramroop Singh died issueless. He is said to have executed a Will in favour of one of his nephews Sohitchand Singh in the year 1916 which was duly registered on 25.05.1916.

4. Sohitchand Singh filed a probate case in the court of learned District Judge, Chapra giving rise to Probate Case No.110 of 1926 in which probate was granted by the learned District Judge of Saran on 28.08.1928.

5. Ramsevak Singh (plaintiff) of Revocation Case No.10 of 1979 filed an application under Section 263 of the Act of 1925 for revocation of probate granted in favour of Sohitchand Singh, father of defendant no.1 Ghinawan Singh. By the impugned judgment, the learned District Judge, Saran, Chapra has been pleased to dismiss the revocation case after holding that the plaintiff was not able to bring any evidence to support his contention that probate was obtained by practicing fraud upon Raunak Singh or upon the court. It has also been held that there is no evidence that wrong citations were made or that summons and notices had not been served upon the person



or persons interested in the matter of grant of probate. Further there was no evidence that the proceedings of the probate case were defective .

Submissions on behalf of the appellants

6. The appellants are the legal heirs of late Ram Sewak Singh who was the original applicant-appellant. Ram Sewak Singh died during the pendency of the present appeal in this Court, hence, his legal heirs have been substituted.

7. Mr. Binod Kumar Singh, learned counsel for the appellants has assailed the impugned judgment on the following two grounds:-

(i) That there was no proper citation in the name of Raunak Singh the father of the original plaintiff-appellant who died in the year 1931. It is contended that Raunak Singh died in the year 1931 when the plaintiff was aged about only 7 years. According to him, the Will is said to have come into being in the year 1916 and it was probated in the year 1928. When he was about two years old, the probate case was filed and when he was about four years old only, the probate was granted. The probate was



obtained by practicing fraud upon the father of the plaintiff and the court and an ex-parte order of probate was obtained.

(ii) The Will (Ext.- 'B') is a forged and fabricated document.

8. It is the case of the plaintiffs that Ramroop Singh was an illiterate person and was a person of weak intellect hence he had no testamentary capacity to execute the Will. Learned counsel for the appellants submits that in course of evidence the two witnesses namely AW-1 and AW-2 both supported the case of the plaintiffs. AW-1 Ram Sakal Singh aged about 85 years has stated that Ramroop had equal love and affection for both the brothers namely Sheo Sahay Singh and Harichand Singh and he could not have been partial to one of them. He has stated that Ramroop was not intelligent enough to understand things and look after his affairs. Learned counsel submits that the applicant witnesses have supported the case of the plaintiffs that survey operation in the village took place some time in the year 1916 or 1917 and name of Raunak Singh and Sohitchand Singh were recorded in equal share in respect of the properties of Ramroop Singh. It is, thus, his submission



that in the year 1916 when the Ramroop Singh is said to have executed the will in respect of a coparcenary property, there was no division of status and separation among the coparceners in the joint family. According to learned counsel for the appellants, if there was no division of status and separation among the coparceners, the will executed in respect of a coparcenary property cannot be said to be legal and valid. In this regard, he has relied upon a judgment of the Hon'ble Supreme Court in the case of **V. Kalyanaswamy (D) By Lrs. & Another vs. L. Bakthavapsalam (D) By Lrs. & Others** reported in **2020 SCC Online SC 584 (para 127)**.

9. Learned counsel for the appellants submits that Khatiyani (Ext.- '1') was published in the year 1920 and it shows that the tenants were jointly recorded and the land were shown in the name of both the branches. According to him, had it been a case that Sohitchand Singh was in possession of the Will, he would have definitely brought it on the record and the property could not have been shown in the joint name. It is his submission that the learned District Judge could not appreciate the evidences available



on the record on behalf of the plaintiffs and wrongly dismissed the revocation case. The impugned judgment is, therefore, liable to be set aside.

Submissions of the Respondent

10. On the other hand, Mr. Nagendra Rai, learned counsel for the respondents has submitted that the plaintiffs have miserably failed to prove that the Will is a forged and fabricated document. According to him, the testator had put his L.T.I. only which was identified by the attesting witnesses and in course of attestation the name of Ramroop was written in the hand of the witness. This, according to learned counsel, cannot be said to be an act of forgery. Learned counsel has taken this Court through the relevant part of the Will (Ext.- 'B') to submit that it has been duly executed in presence of the witnesses. Learned counsel further submits that the fact that the Will is registered document would give rise to a presumption of valid execution of will. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Prem Singh & Ors. Vs. Birbal & Ors.** reported in **(2006) 5 SCC 353 (para 28)**. The judgment refers inter-



alia presumptions under Section 114 of the Evidence Act. Illustration (e) says that there will be a presumption of existence of certain facts and that judicial and official acts have been regularly conducted will be one of the presumptions.

11. Learned counsel further submits that there was a severance of status in the different branches and the separation among the coparceners which is evident on a bare perusal of Khatiyani (Ext.- '1'). It would appear from Ext.- '1' that several plots were recorded in exclusive possession of Raunak Singh such as plot nos.1683, 1671 and 1607.

12. Learned counsel submits that the plaintiff/applicant had earlier filed Title Suit No.29 of 1973 in which after filing of the written statement by the respondents duly disclosing about the probate of the Will, the applicant had left the Pairvi of the title suit and allowed that to be dismissed in default. He again filed Title Suit No.69 of 1975 and in this case when he realized in course of evidence that the probate of the Will is likely to come in his way, after about four years he chose to file an



application seeking revocation of the probate. It is submitted that in the plaint of Title Suit No.69 of 1975 (paragraph 5 and 6) it is the stand of the plaintiffs that there was a severance in the status of the joint family and all the branches of the three sons of Suphal Singh had separated prior to survey.

13. Mr. Rai, learned counsel for the respondents submits that for breaking the coparcenary, there is no need of partition by metes and bounds. The coparcener may still remain in joint possession and retain their status as tenants in common. Learned counsel referred Article 321 from the Mulla's Hindu Law (24th Edition) and relied upon a judgment of the Hon'ble Supreme Court in the case of **V. Kalyanaswamy** (supra).

14. It is further contended that the plaintiffs never contended in the learned court below by way of pleading that there was no severance of status and separation. It is submitted that this plea is being taken for the first time in appeal that too without any specific ground in the appeal.

15. Learned counsel further submits that as



regards not citing Raunak Singh in the probate case is concerned, the plaintiffs could not bring any evidence on record. The plaintiffs had not even gone through the records of the probate case and in course of evidence the plaintiff had admitted that he had not got the record of the probate case inspected. He did not even apply for calling for the records in the learned court below. In these circumstances, the learned court below has rightly concluded that as a prudent man the plaintiff should have gone through the records of the probate case and should not have merely contended himself by saying that the probate was obtained fraudulently.

16. Learned counsel lastly submits that in fact the revocation case was filed much after the expiry of period of limitation. The plaintiffs had knowledge of the probate which would be evident from the order dated 07.02.1962 passed by the Circle Officer, Parsa, Saran by which the claim of the plaintiffs was rejected on the basis of the probate dated 28.08.1928, thus, as back in the year 1962 the plaintiffs had come to know about the probate. It is submitted that the learned court below has though held that



it was not very much relevant because there was no limitation for taking an action for revocation, this view of the learned court below would not be correct inasmuch as it had been held by this Court in the case of **Smt. Sharda Devi Vs. Santosh Kumar Sinha** reported in **2006(3) PLJR 433** (para 4) that the residuary Article i.e Article 137 of the Limitation Act would apply. It is, thus, his submission that since the appellant was aware of the existence of probate at least since 07.02.1962 (Ext.- 'F'), the application filed after 17 years and four years after filing of the Title Suit No.69 of 1975 was barred by limitation. Learned counsel submits that the learned court below has on the question of knowledge of the probate recorded a clear finding that the plaintiffs had knowledge of the probate since 07.02.1962, thus, an erroneous view in law has been taken on the question of limitation saying that no period of limitation is provided for an application seeking revocation of the probate. On this ground, learned counsel for the respondents has prayed for dismissal of the appeal.

Consideration

17. Having heard learned counsel for the



appellants and the respondents as also on perusal of the records, this Court finds that the first ground to assail the impugned judgment is that a citation in the name of Raunak Singh was not issued despite that the said Raunak Singh had got interest in the property.

18. On perusal of the impugned judgment and the records it appears that the plaintiffs had produced two witnesses in support of their case. Ram Sakal Singh (AW-1) had claimed himself aged about 85 years. He had not an witness on this point. Ram Sevak Singh (AW-2), son of Raunak Singh had stated in his examination-in-chief that Sohitchand Singh did not make his father a party to the probate case. He had stated that no notice was either issued or served on his father in the probate case. He had further stated that he did not know why Sohitchand Singh did not make his father a party in the probate case. In further paragraphs of his examination-in-chief he says that he was 7 years of age when his father died. In his cross-examination, he has stated that he had not got the records of the probate case inspected. In this regard, learned District Judge has upon analysis of the evidence on the record held



that the probate case was filed in the year 1916 and had been probated in the year 1928, hence AW-2 was about two years old when the probate case was filed and he was about four years old when the probate was granted, therefore, he was not competent to speak about the will or about the probate case. The learned District Judge has further noticed that AW-2 has himself admitted that he had not conducted any inspection of the records of the probate case. The learned District Judge, is, therefore absolutely right in saying that as a prudent man the plaintiff should have gone through the records of the probate case and should not have merely contented himself by saying that the probate was obtained fraudulently. This Court finds no reason to interfere with this finding of the learned court below.

19. The second ground taken on behalf of the appellant is that the Will is a forged and fabricated document as Ramroop Singh was not an illiterate person and he was a man of weak intellect who could not have executed the Will. On this point this Court finds that AW-1 has supported the case of the plaintiffs saying that Ramroop Singh was a simpleton to the extent of being foolish and he



was not intelligent enough to understand things and look after his affairs. He has further stated that Ramroop singh did not executed any document or any will in favour of Sohitchand Singh. In his cross-examination, however, this witness has stated that he did not know in which year Ramroop Singh or Haricharan died. He has further stated that he had no concern with the family of Sohitchand Singh and Raunak Singh. He was suggested that Ramroop and his brothers were separate inter-se which he denied. The learned District Judge has perused the evidence and noticed that the Will is a registered document, therefore, there will be a presumption of the validity of the Act under Section 85 of the Evidence Act read with Illustration (e) of Section 114 of the Evidence Act. The District Judge has dealt with the submission on the point of joint recording of certain land in the name of both the brothers in the survey. In paragraph '10' of the judgment the court has taken a view that in absence of exact date of death of Ramroop Singh and the date of commencement of the survey operation no inference could be drawn as to the equality of share of Raunak Singh, the father of plaintiff and Sohitchand Singh in whose favour



the Will was executed. The court has held that even if the Will was there at the time of the survey, its non-production before the survey authorities cannot lead to any inference about its non-existence on the date it purports to have been executed by Ramroop Singh. It has been held that, may be, the Will was not produced before the survey authorities because it had not been probated prior to the year 1928.

20. I have given a careful consideration to the findings of the learned court below and am of the opinion that the reasons and rationale provided by the learned District Judge on this point is fully logical and flowing from the evidence on the record, hence no different view may be taken by this Court.

21. In result, this Court finds no reason to interfere with the impugned judgment.

22. This appeal fails and is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

arvind/-

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