

IN THE HIGH COURT OF JUDICATURE AT PATNA

TEST CASE No.8 of 2023

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In the Goods of Late Dr. Paras Nath Prasad, Son of Late Pundeo Prasad Sah, resident of Village/Mohalla-A/65, Road No. 4A, Magistrate Colony, P.O. - Ashiana Nagar, P.S. Rajeev Nagar, District - Patna, Bihar.

AND

In the matter of an application filed under Sections 276 r/w 300 of the Indian Succession Act for grant of Probate of the Registered Will dated 14.07.2016.

AND

In the matter of an application filed by

Smt. Ratneshwari Devi, Wife of Late Dr. Paras Nath Prasad, Resident of Mohalla-Mohalla-A/65, Road No. 4A, Magistrate Colony, P.O. - Ashiana Nagar, P.S. Rajeev Nagar, District - Patna, Bihar.

... .. Applicant

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Indian Succession Act, 1925—Sections 276 read with Section 300—grant of Probate—of registered Will—registered will has been executed in favour of the applicant, whereby she was appointed an executor of the Will—none of the near relatives have objected to the grant of probate of registered Will in favour of the applicant rather they all have filed their 'No Objection Affidavits'—witnesses for the applicant including the attesting witness have proved the Will—all witnesses in categorical terms have stated that at the time of execution of Will, testator (Late Paras Nath Prasad) was in a good physical and mental health and he voluntarily appeared before the registry office and completed all the formalities and his signature has also been identified by the witnesses—the testator, executed the Will in favour of legatee by appointing her the executor of the Will in a proper state of mind with proper understanding of the contents of the Will—application allowed—Probate of the Will be issued in favour of applicant. **(Paras 10 to 12)**

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resident of Village/Mohalla-A/65, Road No. 4A, Magistrate Colony, P.O. -
Ashiana Nagar, P.S. Rajeev Nagar, District - Patna, Bihar.

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Smt. Ratneshwari Devi, Wife of Late Dr. Paras Nath Prasad, Resident of
Mohalla-Mohalla-A/65, Road No. 4A, Magistrate Colony, P.O. - Ashiana
Nagar, P.S. Rajeev Nagar, District - Patna, Bihar.

... .. Applicant

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Appearance :

For the Petitioner/s	:	Mr. Naresh Prasad, Advocate Mr. Mithilesh Kumar Arya, Advocate
For the NR/s	:	Mr. Arbind Kumar, Advocate Mr. Sitanshu Shekar Surghi

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 30-04-2024

Heard learned counsel for the applicant as well as
learned counsel for the NRs.

02. This application has been filed under Sections 276
read with Section 300 of the Indian Succession Act for grant of
Probate of the registered Will dated 14.07.2016 executed by late
Dr. Paras Nath Prasad. The registered will has been executed in
favour of the applicant namely, Ratneshwari Devi, Wife of Late



Dr. Prasad Nath Prasad, whereby she has also been appointed executor of the aforesaid Will dated 14.07.2016.

03. It has been submitted on behalf of the applicant that Late Dr. Paras Nath Prasad executed the registered Will dated 14.07.2016 voluntarily in good physical health and sound state of mind, after understanding the contents of the Will, without any undue influence or coercion of anybody, in presence of two attesting witnesses, namely, (i) Chandra Shekar Sharma (AW-1), resident of Mohalla-B/30, Road No. 4A, Magistrate Colony, P.O.-Ashiana Nagar, P.S. Rajeev Nagar, District-Patna-800025 and (ii) R. R. Dwar Singh (AW-2), resident of Mohalla- 106/B, Road No. 4A, Magistrate Colony, P.O.-Ashiana Nagar, P.S.-Rajeev Nagar, District-Patna-800025. The above AW-2, R. R. Dwar Singh died on 26.04.2021. The learned counsel further submitted that the said testator, Late Dr. Paras Nath Prasad, was a Hindu governed by the Mitakshara School of Hindu Law and was permanently residing at Mohalla-A/65, Road No. 4A, Magistrate Colony, P.O.-Ashiana Nagar, P.S.-Rajeev Nagar, District-Patna, which falls within the territorial jurisdiction of this Court. The testator died on 17.09.2017 at his own residence at Ashiana Nagar, Patna, Bihar at about 03:00 AM and the Will dated 14.07.2016 is the last Will



of the testator, which was duly executed at the office of District-Registrar, Registry Office, Patna on 14.07.2016. The testator, late Paras Nath Prasad died leaving behind his widow, namely, Ratneshwari Devi and one daughter, namely, Kiran Kumari wife of Sri Rakesh Nandan Prasad and two sons, namely, Prem Kumar and Pankaj Kumar, respectively. The property covered under the Will is the self acquired property of the testator and as the sole owner he bequeathed the property of his own through registered Will in favour of his wife Ratneshwari Devi and the testator has also appointed his wife, Ratneshwari Devi as the Executor of the Will dated 14.07.2016. The applicant has been named as sole beneficiary/legatee of the registered will dated 14.07.2016 executed by the testator. The amount of asset, which are likely to come in the hands of the applicant is approximately Rs. 2,00,00,000/- (Rs. two crore only), which is mentioned in Schedule-A of the plaint. The amount of liabilities and other deduction are given in Schedule-B of the plaint.

04. The applicant has named all the legal heirs and arrayed as near relatives (NRs) of the testator and the aforesaid three heirs of the testator, NRs-1, 2 and 3, have also filed their 'No Objection Affidavit' in favour of their mother, Ratneshwari Devi (applicant). In their affidavits, the aforesaid NRs have



affirmed and declared that the Will dated 14.07.2016 executed by Late Dr. Paras Nath Prasad is a genuine one and they have no objection if probate is granted by this Court in favour of the applicant. Since the near relatives of the testator appeared through Vakalatnama and also filed their 'No Objection Affidavits', this Court vide order dated 14.09.2023, dispensed with the process of issuance of special citation upon the aforesaid three near relatives and the applicant was directed to take steps for publication of general citation in two local daily newspapers, one in Hindi, either in *Hindustan/Dainik Bhaskar /Dainik Jagran/Prabhat Khabar* in their Patna Editions and one in English, either in Hindustan Times or Times of India. Thereafter, affidavit filed on behalf of the applicant in support of publication of general citation in Hindustan Times (English) and *Prabhat Khabar* (Hindi), both dated 27.09.2023, was accepted and was kept on record and general citation upon all the near relatives was declared to be validly served. The aforesaid NRs did not choose to file any caveat or objection to grant of probate in favour the applicant rather they filed their 'No Objection Affidavits' in favour of grant of probate in favour of the applicant. Moreover, none of the near relatives cross examined the witnesses produced on behalf of the applicant



though they were represented by their respective learned counsel.

05. In support of the case, altogether four witnesses, including one attesting witness of the Will, have been examined on behalf of the applicant, namely, Smt. Kiran Kumari (AW-1), Sri Harsh Verdhan (AW-2), applicant-Smt. Ratneshwari Devi herself examined as AW-3 and Sri Chandra Shekhar Sharma, attesting witness of the Will, examined as AW-4.

The AW-1, Smt. Kiran Kumari, has been examined on 25.01.2024. She has categorically stated in her evidence that she is the daughter of the testator, Late Dr. Paras Nath Prasad and her father (testator) has executed and got registered the Will on 14.07.2016 for which the present probate case has been filed. This witness also identified the original registered will dated 14.07.2016 executed by the testator, namely, Late Dr. Paras Nath Prasad and his signature over all pages of the Will, which have been marked as Exhibit-1 and Exhibit-2 series, respectively. This witness also identified the signatures of two attesting witness, namely, Sri Chandra Shekhar Sharma and Sri Raj Mohan Ram Dwar Singh at different pages of the Will, which have been marked as Exhibit-3 series and Exhibit-4 series, respectively. This witness further deposed that she was



the identifier of the testator of the Will at the time of registration of the Will and she also proved her signature at the back of first page of the Will, which has been marked as Exhibit-5. This witness has categorically stated that at the time of execution of the Will, the testator was physically fit and was of sound mind and the same was executed without any force, coercion or duress. Lastly, this witness deposed that so far as her knowledge goes, the said registered Will dated 14.07.2016 was the last Will of her father (the testator).

06. AW-2, namely, Harsh Verdhan has been examined on 25.01.2024. This witness, in his deposition, stated that the testator was known to him as he is the son of one of the attesting witnesses of the Will, namely, late Raj Mohan Ram Dwar Singh. He further stated that his father died on 26.04.2021, who was the attesting witness of the Will dated 14.07.2016 executed by Late Dr. Paras Nath Prasad and he was also present at the time of execution of the Will. He further deposed that the applicant, Ratneshwari Devi, is the wife of testator. This witness categorically stated that the testator has executed the Will on 14.07.2016 in presence of two attesting witnesses, namely, Sri Chandra Shekhar Sharma and his father Late Raj Mohan Ram Dwar Singh the witness also proved the original will dated



14.07.2016 (Exhibit-1) and identified the signature of the testator over the Will (Exhibit-2 series), signatures of attesting witnesses, namely, Chandra Shekhar Sharma (Exhibit-3 series) and late Raj Mohan Ram Dwar Singh (Exhibit-4 series) at different pages of the Will. This witness has further stated that the testator has executed the will in his presence and during execution of the Will, the testator, Late Paras Nath Prasad first put his signature over the Will and thereafter, at the request of testator, the attesting witnesses put their signatures on the Will, respectively. He further deposed that the identifier of the testator during registration of the Will before the Registration Officer, Patna, was the daughter of testator, namely, Smt. Kiran Kumari (AW-1) and he identified the signature of identifier (Exhibit-5). This witness further stated that at the time of execution of the Will, he did not get any impression of coercion or duress on the testator and the testator was physically fit and was of sound mind.

07. AW-3 namely Ratneshwari Devi is the applicant herself. The applicant has been examined on 25.01.2024. This witness has stated that testator was her husband and he has executed the Will in favour of the applicant. She further stated that her husband (testator) died on 17.09.2017, who executed



the Will on 14.07.2016. She also proved the original Will dated 14.07.2016 (Exhibit-1) and identified the signature of the testator over the Will (Exhibit 2 series). This witness also identified the signatures of both the attesting witnesses on different pages of the Will (Exhibit-3 series and Exhibit-4 series). She further stated that her daughter, Kiran Kumari, was the identifier of her husband at the time of registration of the Will and she identified the signature of identifier (Exhibit-5). This witness also affirmed that her husband was physically fit and was of sound mind and has executed the Will dated 14.07.2016 without any force, coercion or duress. She further stated that her sons and daughter have filed their 'No Objection Affidavits' in the present case and they have no objection in connection with the Will dated 14.07.2016 and on the basis of NOC given by other legal heirs of her husband, the house property has already been mutated in her name.

08. AW-4, namely, Chandra Shekhar Sharma is the attesting witness of the Will dated 14.07.2016 executed by the testator and considering his advance age, this Court appointed Advocate Commissioner to examine him and he has been examined on 08.02.2024. In his deposition before the Advocate Commissioner, this witness supported the applicant's case. He



stated that he was known to the Testator, late Dr. Paras Nath Prasad, who had executed his last Will on 14.07.2016, in which he along with late Raj Mohan Ram Dwar Singh had put their respective signatures as attesting witnesses over the Will. This witness categorically stated that the testator had got the draft Will typed as per his desire and requested him to become an attesting witness over the Will and in presence and this witness and another attesting witness, namely, R. R. Dwar Singh, the testator first signed over the Will and thereafter at his request, both the attesting witnesses put their respective signatures over the Will dated 14.07.2016. He further deposed that on the same day, they reached at the Registry Office, Patna and the testator got his Will registered. The daughter of the testator, Smt. Kiran Kumari, had identified the testator before the Registry Office, Patna. He also stated that some persons including the son of Late R. R. Dwar Singh, namely, Sri Harsh Verdhan were also present at the time of execution as well as at the time of registration of the Will on 14.07.2016. This witness also proved the registered Will dated 14.07.2016 (Exhibit-1), signatures of testator over the Will (Exhibit-2 series), his signature over the Will (Exhibit-3 series), signature of another attesting witness, namely, R. R. Dwar Singh (Exhibit-4 series) and signature of



identifier (Exhibit-5). This witness further deposed that he knows the entire family members of the testator including the applicant of the case, who happens to be the wife of testator. On Advocate Commissioner's question, this witness categorically stated that there was no external pressure of any body upon the testator to execute the Will as the legatee was his own wife and the testator was in sound state of body and mind at the time of execution of Will on 14.07.2016.

09. Learned counsel for the applicant further submits that none of the near relatives have objected to the grant of probate of this registered Will in favour of the applicant rather they all have filed their 'No Objection Affidavits'. In the present case the will has already been proved according to provisions of Indian Evidence Act by the witnesses for the applicant including the attesting witness of the Will and the Will has been correctly proved. It is also important to mention that the Will is a registered will of the testator as he himself appeared before the registrar and admitted execution of the Will. There is no scope of any suspicion nor anybody has challenged the Will in question.

10. Having regard to the aforesaid facts and circumstances and considering the submission made by the



learned counsel for the applicant, I am of the view that the witnesses for the applicant including the attesting witness have proved the Will. All witnesses in categorical terms have stated that at the time of execution of Will, Late Paras Nath Prasad was in a good physical and mental health and he voluntarily appeared before the registry office and completed all the formalities and his signature has also been identified by the witnesses.

11. On analysis of the evidence(s) which have been deposed by the witnesses, it is very much clear that Late Paras Nath Prasad, in good state of conscious mind, without any coercion and pressure, fully understanding the contents of the Will, had put his signature on each and every page of the Will and on his request the attesting witnesses put their respective signatures in the body of the Will which has been proved by the witnesses as discussed herein-above.

Hence, this Court is of considered view that the testator, Late Paras Nath Prasad, executed the Will in favour of legatee, Smt. Ratneshwari Devi, by appointing her the executor of the aforesaid Will dated 14.07.2016 in a proper state of mind with proper understanding of the contents of the Will.

12. Accordingly, this application is allowed. Let the



Probate of the Will dated 14.07.2016 be issued in favour of
applicant of this case with a copy of the Will annexed thereof,
which shall have effect throughout the territory of India.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-05-2024
Transmission Date	NA

