

In The Court of District Judge I, Darbhanga

Present - Neeraj Kumar II, BSJS BR00552

Probate 42/2022

{ Proceedings under section 276 of Indian succession Act }

Ranjan Kumar Jha Versus The Estate of Late Mishri Kant Jha and Late Shyama Devi

Date of Final Order/Judgment – Monday, The 07th day of September, 2026

Applicant	A1	Ranjan Kumar Jha, aged about 40 Years, son of Bechan Jha, resident of Village-Makranda, PS and PO - Manigachhi, District- Darbhanga
	Represented By	Sri Lal Kant Mishra, Learned Advocate

Versus

The Estate of Late Mishri Kant Jha and Shyama Devi

Final order / Judgment

1. This is an application under section 276 of Indian Succession Act for grant of Probate with respect to a registered WILL dated 01/04/1995 executed by Late Mishri Kant Jha and Shyama Devi (Hereinafter referred to as the T1 and T2 respectively), at the time of their death residing at Village Makranda, PS – Manigachhi, District – Darbhanga with respect to the property situated at Darbhanga mentioned in the WILL in favour of the Applicant.

The Applicant Case

2. The case of applicant is that T1 died on 18/04/1999 and T2 died on 20/03/2020 at Village Makranda, PS Manigachhi, District Samastipur issueless. A WILL dated 01/04/1995 was duly executed by both the the testators in favor of the Applicant with respect to their property. The WILL was executed by both the testators in their physical fitness with sound state of mind without any coercion in favor of the Applicant in presence of attesting witnesses. The WILL is the last WILL of the testators and the Applicant is the legatee and executor. No other application ever made with respect to the WILL in any court and the property situate in Jurisdiction of this Court. The petition is supported with the verification of an attesting witness Ashok Kumar Jha.

Proceedings in the Case

3. General and special citations were issued to call upon the persons claiming to have any interest in the Estate of the deceased in the District of Darbhanga.

4. Anita Devi appeared. She stated that the deceased testators were her Mama and Mami. She did not file any objection, rather supported the applicant petition and submitted to allow the Probate.

5. Other persons listed in para 5(2) or any other person did not appear to contest the case.

Evidence

6. The applicant produced following evidence

1. Oral evidence

S.N.	Name	Date
A. W. 1	Ashok Kumar Jha	07.12.2024
A. W. 2	Ranjan Kumar Jha	23.01.2025
A. W. 3	Santosh Kumar Choudhary	20.07.2026

2. Documentary evidence

Exhibit 1	The WILL
Exhibit 1/1	Signature of A. W. 1 (Attesting witness) on the WILL

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Exhibit 1/2	Signature of witness Kedar Jha on the WILL
Exhibit 1/3	Signature of the scribe on the WILL
Exhibit 2	Affidavit testimony of AW2 dated 23.01.2025
Exhibit 3	Death certificate of Mishri Kant Jha
Exhibit 3/1	Death certificate of Shyama Devi
7. The OP did not produce any evidence	
Argument	
8. It is argued by the Learned Counsel of the applicant that petition was brought for grant of probate with respect to the WILL dated 01.04.1995 executed by late Mishri Kant and his wife Late Shyama Devi in his name. It is further argued that Late Mishri Kant Jha died on 18.04.1999 and his wife late Shyama Devi also died on 20.03.2020 in Darbhanga. The Learned Counsel argues that the attesting witness Ashok got the WILL marked as Exhibit along with his, other attesting witness signature and the scribe signature. It is also argued that the testators bequeathed their self acquired property through the WILL in their sound state of mind and without coercion. It is prayed to grant the Probate.	
Point for Determination	
9. The points for determination before me are whether the WILL in question is 1. Genuine, valid and duly executed by the Testators in sound state of their mind 2. The last WILL of Testators and 3. Not surrounded by any suspicious circumstance.	
The Laws Involved	
10. It would be apposite to have a look over the relevant provisions of the Indian Evidence Act and Indian Succession Act regarding grant of Probate	
1. Section 68 of Indian Evidence Act - Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. 2. Indian Succession Act 1. S. 59 - Person capable of making WILLS. -Every person of sound mind not being a minor may dispose of his property by WILL. Explanation 1.--A married woman may dispose by WILL of any property which she could alienate by her own act during her life. Explanation 2.--Persons who are deaf or dumb or blind are not thereby incapacitated for making a WILL if they are able to know what they do by it. Explanation 3.--A person who is ordinarily insane may make a WILL during interval in which he is of sound mind. Explanation 4.--No person can make a WILL while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing. 2. S. 63 - Execution of unprivileged WILLS.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1*[or an airman so employed or engaged,] or a mariner at sea, shall execute his WILL according to the following rules:-- (a) The testator shall sign or shall affix his mark to the WILL, or it shall be signed by some other person in his presence and by his direction.	
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(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a WILL.

(c) The WILL shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the WILL or has seen some other person sign the WILL, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the WILL in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

3. S. 264 - Jurisdiction of District Judge in granting and revoking probates, etc.-(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.
(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, 1* shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.
4. S. 270 - When probate or administration may be granted by District Judge.- Probate of the WILL or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immoveable, within the Jurisdiction of the Judge.
5. Section 276 - Petition for Probate.-
 - (1) Application for Probate or for letters of administration, with the WILL annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the WILL or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating--
 - (a) the time of the testator's death.
 - (b) that the writing annexed is his last WILL and testament,
 - (c) that it was duly executed,
 - (d) the amount of assets which are likely to come to the Applicant's hands, and
 - (e) when the application is for Probate, that the Applicant is the executor named in the WILL.
 - (2) In addition to these particulars, the petition shall further state,--
 - (a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
 - (b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.
 - (3) Where the application is to the District Judge and any portion of the assets likely to come to the Applicant's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.
6. S. 279. Addition to statement in petition, etc., for probate or letters of administration in certain cases.-(1) Every person applying to any of the Courts mentioned in the proviso to section 273 for probate of a WILL or letters of administration of an estate intended to have effect throughout 1*[India], shall state in his petition, in addition to the matters respectively required by section

276 and section 278, that to the best of his belief no application has been made to any other Court for a probate of the same WILL or for letters of administration of the same estate, intended to have such effect as last aforesaid, or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 273 may, if it thinks fit, reject the same.

7. S. 280. Petition for probate, etc., to be signed and verified.-The petition for probate or letters of administration shall in all cases be subscribed by the Applicant and his pleader, if any, and shall be verified by the Applicant in the following manner, namely:--"I (A.B.), the Applicant in the above petition, declare that what is stated therein is true to the best of my information and belief."
8. Section 281 - Verification of petition for Probate, by one witness to WILL. - Where the application is for Probate, the petition shall also be verified by at least one of the witnesses to the WILL (when procurable) in the manner or to the effect following, namely:-- "I (C.D.), one of the witnesses to the last WILL and testament of the testator mentioned in the above petition, declare that
9. S. 283 - Powers of District Judge.-
 - (1) In all cases the District Judge or District Delegate may, if he thinks proper,
 - (a) examine the Applicant in person, upon oath;
 - (b) require further evidence of the due execution of the WILL or the right of the Applicant to the letters of administration, as the case may be;
 - (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.
 - (2) The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.
 - (3) Where any portion of the assets has been stated by the Applicant to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

Finding

11. It would be profitable to have a look over the statements of different witnesses examined by the Applicant

1. A. W. 1 is Ashok Kumar Jha. In the chief examination he stated that the testators executed a registered WILL in the name of the applicant on 01.04.1995, wherein he became an identifier at the instance of both the testators and made his signature as an identifier. He stated that both the testators made their respective impressions on the WILL in his presence. He got the WILL marked as Exhibit 1, his signature as Exhibit 1/1, signature of witness Kedar Jha as Exhibit 1/2 and that of scribe as Exhibit 1/3.

In the cross-examination para 9 he stated that the property was bequeathed upon their Daughter's son by the testators.

2. A. W. 2 is Ranjan Kumar Jha, the Applicant. In the chief-examination he stated that the testators late Mishrikant Jha and late Shyama Devi were his maternal grandfather and maternal grandmother in relation. He stated that both the said testators executed a registered WILL in his name on the date 01.04.1995 with respect to all their self-

acquired land measuring 2 bigha, 5 katha, 13 dhur and 10/2 kanma, He stated that his upbringing was done from childhood itself by both the testators and after that, he continued to look after and serve both of them until their death, and he also performed their cremation and last rites according to the Hindu laws and rituals after their demise. He stated that the testator late Mishrikant Jha died on 18.04.1999 and his wife late Shyama Devi died on 20.03.2020 at their residence in village Makarnda, Police Station Manigachhi, District- Darbhanga. He stated that the testators had not executed any WILL prior to the current WILL or during this case, and this WILL was their first and last WILL. His affidavit was marked as Exhibit 2. He stated that OP 1 Anita Devi was his mother. He stated that his mother was the only child of her parents. He stated that his residence was at the house of the testators itself. He stated in response to the court questions that he used to reside with his maternal grandfather and maternal grandmother. He stated that the land of the WILL was the self-acquired land of his maternal grandfather, and the brother and sister of his maternal grandfather had no objection to this.

3. A. W. 3 is Santosh Kumar Choudhary. In the chief examination he got the death certificate of late Mishrikant Jha dated 04.06.2000 marked as Exhibit 3 and the death certificate of late Shyama Devi dated 14.07.2020 as Exhibit 3/1.

Decision and the reasons for the Decision

12. Before taking up for consideration the genuineness or otherwise of the WILL in question it may be convenient to set out briefly the legal position regarding the proof of WILL. In *Barry v. Butlin*¹, two rules were formulated regarding the proof of WILL.
 1. First the onus probandi lies in every case upon the party propounding a WILL, and he must satisfy the conscience of the Court that the instrument so propounded is the last WILL of a free and capable testator.
 2. Second if a party writes or prepares a WILL under which he takes a benefit that is a circumstance that ought generally to excite the suspicion of the Court and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true WILL of the deceased.
13. In *Ram Gopal v. Aipna Kunwar*², it is observed

“A WILL is one of the most solemn documents known to the law. By it a dead man entrusts to the living the carrying out of his wishes and as it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was executed it is essential that trustworthy and effective evidence should be given to establish compliance with the necessary forms of law”.
14. It is trite law that the burden to prove the WILL is free from all suspicious circumstances is upon the propounder of the WILL. The propounder is required to remove all legitimate suspicions before the document can be accepted as the last WILL of the testator³. The onus on propounder to prove the WILL shall stand discharged if the following elements are established:
 1. Testator was of sound disposing state of mind.
 2. Understood the nature and effect of the disposition
 3. Signed on his own free WILL
 4. Signed in presence of two witnesses.
15. The execution of a WILL may be surrounded by suspicious circumstances which amongst others may include (i) the character or appearance of the signature of the testator raising doubt as to its genuineness, (ii) feeble and debilitated condition of the testator's mind at the time of execution of the WILL raising doubt as to the mental

¹ (1838) 2 Moo PC 480

² AIR 1922 PC 366

³ *Rani Purnima Devi vs. Khagendra Narayan Deb* AIR 1962 Supreme Court 567

capacity of the testator, (iii) the unnatural, improbable or unfair dispositions in the WILL which in the light of relevant circumstances might indicate that the disposition might not be the result of the testator's free WILL and mind and (iv) a prominent part taken by the propounder in the execution of a WILL under which the propounder received substantial benefits.

16. Even without presence of undue influence, fraud or coercion suspicious circumstances as aforesaid surrounding the execution of a WILL there may raise a doubt as to whether the testator was acting on his own free WILL in executing the document. The WILL is a solemn document that comes into operation after the death of the testator and it was for this reason special provisions have been made in the Indian Succession Act for making of a WILL and in the Indian Evidence Act for proving the WILL in a court of law.
17. The burden of proof cast upon the propounder is, in general discharged by proof of the sound and disposing state of the testator's mind and his signature as required by law. But those suspicious circumstances are cannot be defined precisely or enumerated exhaustively. They must depend necessarily upon the facts of each case. Though a propounder has the obligation to prove the WILL in accordance with law and remove all well grounded suspicions, the quantum of proof that can be expected cannot conform to scientific exactitude or mathematical precision. The standard of proof can only be one that WILL satisfy a normal prudent person.
18. The burden of proving a WILL to be valid is upon the party putting forward the WILL. The WILL must satisfy the conscience of the Court that it is the last WILL of a free and capable testator. Every person of completely sound mind, not being a minor, may, of his own volition, dispose his property through a WILL. It is also necessary that the testator should sign or affix his mark on the WILL and signature/mark of the testator should be attested by two or more persons in presence of testator and on his/her instruction.
19. In *Anil Kak v. Sharada Raje*⁴ (paragraphs 52, 53, 54 & 55) the Apex Court opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, observing:
 "52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the WILL annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.
 53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.
 54. It may be true that deprivation of a due share by the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a WILL.
 55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation."
20. Similarly, in *Leela Rajagopal and others v. Kamala Menon Cocharan and others*⁵, reported in , at paragraph 13 the Hon'ble Supreme Court opined as under:-
 "13. A WILL may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a WILL or the unnatural circumstances surrounding its execution WILL definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, WILL be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a WILL or a singular circumstance that may appear from the process leading to its execution or

⁴ (2008) 7 SCC 695

⁵ (2014) 15 SCC 570

registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

21. In Ramabai Padmakar Patil (dead) & Ors. V. Rukminibai Vishnu Vekhande & Ors.⁶ (paragraph 8), Hon'ble Apex Court observes
"A WILL is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a WILL. It is true that a propounder if the WILL has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be suspicious circumstance especially in a case where the request has been made in favour of an offspring.
22. In Pushpavati and Ors. v. Chandraja Kadanba and Ors⁷, it has been held that
" If the propounder succeeds in removing the suspicious circumstance, the Court would have to give effect to the WILL, even if the WILL might be unnatural in the sense that it has cut off wholly or in part near relations."
23. In Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by Lbs. and Ors.⁸, it is observed
" The circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the WILL is to interfere with the normal line of succession in and so, natural heirs would be debarred in every case of WILL. Of course, it may be that in some cases they are fully debarred and in some cases partly".
24. It is observed in the case of Sashi Kumar Banerjee & Ors. V. Subodh Kumar Banerjee since deceased⁹
" If the propounder removes doubt by clear and satisfactory evidence, even if WILL seems unnatural and cuts off near relations, Court should not decline to grant probate".
25. Section 59 of the Indian Succession Act requires that the testator should have a sound mind. The "sound mind" mean that the testator should have his mental faculties in their fullest vigour, but he should have the capacity to understand the nature of his property the memory to remember the relations and persons normally having claims on his property the memory to remember the relation and persons normally having claims on his bounty and also a judgment of his own in making the dispositions.
26. Exhibit 1 is the WILL. On perusal of the same it is clear that it is a registered WILL executed by the testators in favor of the Applicant on 01/04/1995. It is stated that the properties mentioned in the WILL are self acquired properties at Darbhanga of the testators. It also states that the Applicant took care of the testators and being pleased with his services, they made the Applicant absolute legatee after the testators death. The Applicant was made the legatee as well as the executor.
27. Applicant Witnesses Ashok who happens to be an identifier came before the Court and supported the applicant case. One of the witness Kedar was said to be very old and unable to walk and move and his signature was also marked by Ashok as Exhibit. Exhibit 3, the death certificate of Mishri Kant Jha mentioned his date of death as 18/04/1999 and the Exhibit 3/1, the death certificate of Shyama mentioned her date of death as 20/03/2020.
28. On careful scrutiny of the oral and documentary evidence available on record, I find that the preparation, voluntary execution and registration of WILL by the testators Mishri Kant and Shyama has been proved by the Applicant. The witness to the WILL came forward and supported the execution of WILL in favor of the Applicants. There is no

⁶ AIR 2003 SC 3109

⁷ AIR (1972) SC 2492

⁸ [1950] 4 SCC 459

⁹ AIR 1964 SC 529

opposition of grant of Probate from any corner as nobody appeared to challenge the WILL. It is stated that this is the last WILL of the testators and no repudiating evidence came to the fore in this respect. The properties mentioned in the WILL situate in District of Darbhanga. Thus this Court has the jurisdiction to entertain such matter.

29. On the basis of discussion made above, I find that the WILL in question is genuine, valid and duly executed by the testators in favor of the Applicant and at time of execution of WILL the testators were in sound state of their mind. I also find that the WILL in question is their last WILL and they executed the WILL voluntarily and without coercion and duress and the WILL is free from any suspicious circumstance. Thus I find that the application of the Applicant for grant of Probate is maintainable and the Applicant is entitled for the grant of Probate in respect of the properties of the testators on the basis of the WILL dated 01/04/1995. Hereinafter order is passed.

Order

30. The petition dated 05/12/2022 under section 276 of the Indian Succession Act is allowed.
1. Let Probate with The WILL (original copy), annexed herewith, of the property and credits of, Late Mishri Kant Jha and Late Shyama Devi deceased, be granted to the Applicant.
 2. The Applicant named hereinbefore is directed to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court, within six months from the date of this grant and also to render to this Court a true account of the said property and credits within one year from the same date.
 3. I order accordingly.
 4. Let this case record be deposited in the record room, but only after all due diligence.

Written, corrected and pronounced by me in open Court

Neeraj Kumar II
District Judge I, Darbhanga
The 07th Day of September, 2026

Date of Judgment/Order	07.09.2026
Date of Reserving Judgment/Order	07.09.2026
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