

District:Gopalganj

In the Court of District & Add. Sessions Judge-I, Gopalganj

Present:Sanjeev Kumar Singh

D.A.J.-I

Dated: 30th April 2026

Probate Case No.:53/2018

Divyansh Dubey S/O Akhileshwar Nath Dubey

R/O:-Balesara,P.S.-Uchkagaon,Distt.-Gopalganj.....Applicant

Versus

1.State of Bihar

2.Akhileshwar Nath Dubey S/O Late Ravindra Nath Dubey

R/O-Balesara,P.S.-Uchkagaon,Distt.-Gopalganj

3.Dewanti Devi W/O Late Arun Tiwari

R/O-Gausia,P.S.-Manjhagarh,Distt.-Gopalganj

4.Bedanti Devi W/O Ramdhari Tiwari

R/O-Bhathawa, P.S.-Kuchaikot,Distt.-Gopalganj

.....O.Ps.

Counsel for the Applicant: Sri Mohan Pd. Rai,Adv.

Counsel for O.P. No.1: Ld. G.P.

Judgement

1.The instant probate case has been filed by the applicants abovenamed under the provisions of Sections 276, Indian Succession Act,1925 praying to grant a certificate of Probate on the basis of the registered Will dated 04.04.2013, executed in his favour by the testator Ravindra Nath Dubey, the applicant's grandfather.

2.Case of the applicant, in nut shell, is that testator Ravindra Nath Dubey S/O Ram Avtar Dubey, the applicant's grandfather was separate from his brothers and was well under title and possession over the land of his share. From his first wife Leelawati Devi the only issue was Akhileshwar Dubey, the applicant's father and O.P.No.2 in this case. From second wife Kalawati Devi there were two daughters Devanti Devi and Bedanti Devi, O.Ps. 3 & 4 respectively. After marriage of his daughters from second wife, testator Ravindra Nath dubey used to reside with his son Akhileshwar Dubey and he was looked after by the applicant who was his only grandson. Applicant took his every care and served him in all manners, so the testator had enormous love and affection for the applicant. Glad with the services rendered by the applicant he decided to execute Will regarding his entire property in applicant's favour. In furtherance of his desire testator Ravindra Nath Dubey came to Mirganj sub-registry office, purchased the requisite stamps and at his dictats scribe Kanhaiya Prasad penned down the Will in presence of attesting witnesses Nagendra Tiwari and Satyabrat Mishra who put their signatures over that. Applicant states further that it is the last Will executed by the testator Ravindra Nath Dubey after completing

all legal formalities and also he was in perfect health and in complete disposing mind at that time. This is evident from the fact that he died well after execution of the deed, i.e. on 15.10.18. So, this is a fit case for grant of Probate.

3. Notice/Citation was issued for appearance of the O.Ps., the service report whereof is attached with record. But, despite waiting for till long, none of the near relatives came forward to file any objection. So the court proceeded further in order to arrive at a logical conclusion by recording evidence etc.

4. On basis of the pleading of the applicant the court finds single issue before it to be decided to arrive at a logical conclusion:

Whether the Will dated 04.04.13 is a genuinely executed and attested piece of document or not ?

Findings

5. To arrive at a logical conclusion, oral as well documentary evidence available on the record is to be taken into consideration. Altogether three witnesses namely Satyabrat Mishra, Nagendra Tiwari and Divyansh Dubey have deposed before the court. A.W. 1 and 2 have deposed that they were well known to Ravindra Nath Dubey since much earlier and there was a family to family relationship with him. He loved his grandson Divyansh Dubey from core of his heart as he used to take his every care. Glad with his services Ravindra Nath Dubey decided to execute a Will in favour of Divyansh regarding all the property of his legal share. He went away to Meerganj sub registry office and at his dictats scribe Kanhaiya Prasad penned down the Will. After putting the testator's signature and fingers' impressions, both of them too put their signatures as attesting witnesses. Both these witnesses state further that at the time execution testator Ravindra Nath Dubey was perfectly well in health, physically as well as mentally both.

6. Applicant Divyansh Dubey has almost repeated the facts while deposing before the court what has been narrated in the plaint. He has stated that his grandfather used to live with his family and he took his every care in all respects. The two daughters borne out of his second wife, O.Ps. 3 & 4, were married in well to do families and they did not come forward to put any objection despite serving notices. In lieu of the services rendered by him, testator executed the Will in his favour. At the time of execution testator was absolutely healthy and in complete disposing mind. Will is duly signed, stamped, identified and attested by witnesses. So, probate may be issued.

7. Apart from the oral evidence certain documents too have been filed in support of the case. Original Will bearing signatures of Testator, identifier, attesting witnesses and deed writer has been filed by the

applicant. Original death certificate of testator Ravindra Nath Dubey too has been filed showing date of his death as 15.10.18. That apart, original copy of the Will too has been filed. All these documents are marked as exhibits.

8. Prior to discussing factual aspects of the case, some legal proposition would essentially be taken into consideration. Will, as defined in section 2(h) of the Indian Succession Act, means a legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. If any document does not disclose anywhere in it that it is to operate after the death of its author, then such document is not a Will. Therefore unless a document is a Will, no Probate or Letters of Administration can be granted on the basis of the Will. Probate of a Will is a legal process that is sometimes required to validate the deceased person's Will in order to his/her wishes to be carried out by an executor named in the will.

9. Section 213(1) Indian Succession Act makes it mandatory for every legatee or executor to obtain a Probate or Letters of Administration of a Will before they try to execute it. Otherwise, the executor or legatee can't establish any right in a court of law pertaining to the concerned Will and any estate mentioned therein. In case of **Ishwardeo Narayan Singh Vs Kamta Devi; AIR 1954 SC 280**, Hon'ble Supreme Court was pleased to hold that the "Probate Court is only concerned with whether the Will was duly executed in accordance with law and whether at the time of such execution the testator was found to be of sound and disposing mind. The question whether a particular bequest is good or bad is not within the perview of Probate Court." Meaning thereby, **the jurisdiction of a Probate Court is limited to determining the genuineness of a Will. It does not have the authority to decide questions of Title or Ownership of property.**

10. It would be fit to refer a celebrated decision rendered by Hon'ble Supreme Court in the case of **H. Venkatachala Iyenger Vs. B.N.Thimmajamma; AIR 1959 SC 443**, wherein Apex Court had clearly distinguished the nature of proof required for a testament as opposed to any other document. Its relevant portion reads as follows, "The party propounding a Will or otherwise making a claim under a Will is no doubt seeking to prove a document and in deciding how it is to be proved, we must inevitably refer to the statutory provisions that govern the proof of documents. Sections 67 and 68 of Evidence Act are relevant for this purpose. Under section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting and for proving such a handwriting u/s 45 and 47 of the Act the opinion of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document

required by law to be attested and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. Similarly, sections 59 and 63 of Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by Will. Section 63 requires that the testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a Will. This section also requires that the Will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the Will set up by propounder is proved to be the last Will of the testator has to be decided in the light of these provisions. Has the testator signed the Will? Did he understand the nature and effect of the dispositions in the Will? Did he put his signature to the Will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the findings on the question of proof of the Will.”

11. In the case of **Jaswant Kaur Vs. Amrit Kaur & Ors.:(1977)1 SCC 369** Hon’ble Supreme Court has pointed out that “when a Will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial 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 let in by the propounder of the Will is such as would satisfy the conscience of the court that the Will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the Will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the Will.”

12. In **Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao ; (2006)13 SCC 433** Hon’ble Supreme Court was pleased to observe in paragraph 34 that “There are several circumstances which would have been held to be described as suspicious circumstances:

- (A) When a doubt is created regarding condition of the mind of the testator despite his signature on the Will;
- (B) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
- (C) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.”

13. In a recently decided case of **Meena Pradhan & Ors. Vs. Kamla Pradhan & Anr.,(2023)9 SCC 734**, Hon’ble Supreme Court has held

that “Suspicious Circumstances must be real, relevant and valid not mere products of a doubting mind. The determination of what constitutes a suspicious circumstance depends on the specific facts and circumstances of each case. If a Will is challenged, the onus is on the Propounder of the Will to prove its validity and execution. While dealing with the Wills tainted by suspicious circumstances, the court applies the test of Judicial Conscience that involves evaluating factors such as the testator’s awareness of the Will’s contents, consequences and nature of dispositions, the testator’s state of mind and memory at the time of execution and whether the testator acted freely.”

14. Now it is to be seen whether the present case fulfills all the statutory requirements to grant a certificate of Probate? As repeatedly held vide the various laws laid down by Hon’ble Apex Court, ***a court dealing with the Probate proceeding is obliged to confine itself to consider the questions relating to execution and attestation of the Will and not about the title or ownership of the land in question. It is also to be seen that during entire exercise no any suspicious circumstance arises.*** In short, apart from statutory compliance, broadly it has to be proved that:

- (a) the testator signed the Will out of his own free will;
- (b) at the time of execution he had a sound state of mind;
- (c) he was aware of the nature and effect thereof and
- (d) the Will was not executed under any suspicious circumstances.

15. Learned counsel for the applicant submits that there are ample materials on the record to establish that testator was in absolutely healthy and in complete disposing mind at the time of executing the Will. He did so on his own free will in lieu of the services rendered by applicants abovenamed. Will is duly attested and all statutory compliance is made while its execution, so deserves to be granted the certificate of Probate.

16. As stated in foregoing paragraphs vide several laws laid down by Hon’ble Supreme Court, a Will is required to fulfill all the formalities enshrined under section 63 of the Indian succession Act, that is to say:

(a). The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as Will;

(b). It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c). Each of the attesting witness must have 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 acknowledgement of such signatures;

(d). Each of the attesting witnesses shall sign the Will in the presence of the Testator, however, the presence of all the witnesses at same time is not required.

17. In the case at hand applicant and other witnesses have candidly deposed that Will was drafted and scribed by the deed writer (Katib) Kanhaiya Prasad as dictated by testator Ravindra Nath Dubey, who got convinced with its contents after hearing the same and then signed and put his finger marks over different pages of Will. Both the attesting witnesses Satyabrath Mishra and Nagendra Tiwari too have testified before the court that testator was in complete disposing mind and it is he who dictated the terms. Original death certificate of the Testator is marked as exhibit and so is the Will in its original form. No any suspicious circumstance has been raised regarding execution and attestation of the Will in question. All the statutory requirements enshrined U/S 63 of Succession Act are fulfilled, so this case is a fit one to be granted the Probate.

Conclusion

18. In light of the discussions made in the foregoing paragraphs and taking the factual and legal aspects of the matter into its thoughtful consideration, this court is of firm view that Testator executed the Will dated 04.04.13 in state of complete disposing mind and same is duly attested as per the relevant provisions of Succession Act.

19. As a consequence, this court holds the Will dated 04.04.13, sought to be probated, as a genuinely executed document, not surrounded in any suspicious circumstances and it deserves grant of Probate. So, the Probate application at hand succeeds as same is allowed. Applicant abovenamed, hereby is entitled to get 'Probate Certificate' on basis of the said Will and accordingly this case is probated in his favour.

20. Office is directed to issue a 'Certificate of Probate' in favour of the applicant Divyansh Dubey at the earliest after completing all sort of formalities.

(Dictated & Corrected by Me)

(Sanjeev Kumar Singh)

A.D.J.-I

Dated: 30.04.2026

(Sanjeev Kumar Singh)

A.D.J.-I

Dated: 30.04.2026