

BRKH010006182012



Presented on : 16-11-2012
Registered on : 19-07-2014
Decided on : 23-03-2026
Duration : 13 years, 4 months, 7 days

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
At Khagaria, (Bihar)**

Presided Over by Shri Rajesh Kumar Bachchan

Title Suit No.- 02/2025

Arising out of Probate Case No.:- 11/2012

IN THE MATTER OF:-

1. Mosomat Binda Devi
W/o- Late Chhathoo Sah
2. Sintoo Sah
S/o- Late Chhathoo Sah
3. Pintoo Sah
S/o- Late Chhathoo Sah
under guardianship and next friend of their mother Mosomat
Binda Devi.
All R/o- vill Dhutoli, Pargana- Farkia,
Post Office-Dhutoli Malpa, P.S. and Anchal-Chautham,
District- Khagaria

.....Plaintiffs

Versus

1. Sikandar Sah
S/o-Late Kamleshwari Sah,
2. Ashok Sah
S/o- Late Kamleshwari Sah
3. Chandra Kala Devi
W/o- Late Jawahar Sah
- 3a. Prince Kumar

Title Suit No. 02 of 2025
Most. Binda Devi and Ors. Vs. Sikandar Sah and Ors.
Date of Judgment : 23.03.2026

- S/o- Late Jawahar Sah,
3b. Twinkle Kumari
D/o- Late Jawahar Sah,
3c. Shashi Kumari
D/o- Late Jawahar Sah,
3d. Bouaa Kumari,
D/o- Late Jawahar Sah, Aged about 10 years
O.P. No. 3a to 3d are minors and under the guardianship and
next friend of their mother, R/o- vill Dhutoli, P.O.- Dhutoli,
P.S. Chautham, Distt.-Khagaria.
4. Murari Sah
S/o- Late Kamleshwari Sah
All R/o- vill Dhutauli, P.O.- Dhutauli Malpa,
P.S. and Anchal- Chautham, District- Khagaria.

.....Opposite Parties

Appearance:

Sh. Ram Kishore Ray for plaintiffs

Sh. Alok Ranjan for defendant No.4

None for others

:: J U D G M E N T ::

1. Plaintiffs have filed present suit on 16.11.2012 under Section 276 of the Indian Succession Act, 1925 (hereinafter referred as 'the Act') seeking probate of Will dated 05.04.1974 executed by late Ramfalli Sahu u/s 276 of the Indian Succession Act, 1925 in favour of Chhathoo Sahu.

BRIEF FACTS OF THE CASE

2. Succinctly the case of the plaintiffs is that Ramfalli Sahu, S/o- Khantar Sahu, R/o- Dhutouli, Pargana, Farkia, P.S.- Chautham, Sub Registry Gogari, District-Munger (New Khagaria) left behind his last will (Basiyatnama) and testament. Ramfalli Sahu passed away at his



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residence at village Dhutouli on 10.11.1974. He duly executed a registered deed of Will (Basiyatnama) in presence of the witness Dinesh Prasad and Surendra Singh. He affixed his L.T.I. on the Will in presence of the aforesaid witnesses, deed writer and other persons. The witnesses also put their signatures respectively in presence of testator on 05.04.1974. Dineshwar Prasad also identified the testament before the Sub- Registrar, Gogari. Deed writer Bateshwar Prasad scribed the instrument of Will at saying of the executant Manmokeer (Testament). He executed the deed of Will at his own heart and on his free desire without any coercion, force or influence. Aforesaid Will and testament was duly executed by Late Ramfalli Sahu in favour of Chhathoo Sahu, on 05.04.1974. The executant (testator) passed away on 10.11.1974. This was last Will of the testament in favour of Chhathoo Sahu. He had bequeathed his entire property, fully detailed in Schedule-A of the application. After death of Ramfalli Sahu the husband of applicant and father of the applicant No. 2 and 3 took khas possession and occupation over the entire land of 4 Bighas 4 kathas 11 Dhoores fully detailed in Schedule-A of the application. He mutated his name in sirista of Anchal Chautham and used to pay revenue and obtain rent receipt. On 16.12.1985 Chhathoo Sahu sold his land 2 Kathas 15 dhoores situated in Mauza- Dhutouli appertaining to Touzi No. 4926, Thana No. 194, appertaining to Khata No. 58, Khesra No.1942/2045 through registered sale deed to Md. Taslim. On 26.06.1989 Chhathoo Sahu also sold his land measuring 4 Kathas situated in Mouza- Dhutouli bearing Touzi No.

Chhathoo Sahu

4920, Thana No. 174, Khata 56, Khesra N. 2011 through registered sale deed to Smt. Kabutari. She mutated her name vide Jamabandi No. 1937. On 24.06.1996 Chhathoo Sahu sold land measuring 4 Kathas 19 dhoors 6 dhurkies through registered sale deed situated in Mouza Dhutouli, P.S. Chautham, District Khagaria bearing Touzi No. 4920, Thana No. 174 appertaining to Khata No. 56, Khesra No. 2011 to Ramchandra Mahto, S/o- of Dhanik Lal Mahton. He mutated his name in sirista of Anchal Choutham vide Jamabandi No. 2277. Most. Binda Devi the applicant no. 1 also sold land measuring 15 dhoors situated in Mauza- Dhutoluli, P.S. Chautham, District- Khagaria bearing Touzi No. 4920, Thana No. 174, appertaining to Khata no. 56, Khesra No. 1880 through registered sale deed to Smt. Ruko Devi on 03.05.2010. She also mutated her name in sirista of Anchal Chutham vide Jamabandi No. 2964. On 02.06.1985 Jaya Devi wife of Sri Kamleshwari Sahoo executed a deed of relinquishment (Bazidavi) in favour of Chhathoo Sahu in respect of 14 Kathas 4 Dhoors 10 Dhurkies through unregistered deed in respect of land appertaining to Khata no. 55, Khesra No. 1961, area of 6 Kathas 6 Dhoors 15 Dhurkies, Khata 56, Khesra No. 1943 measuring an area 7 Kathas 18 dhoors. After death of Chhathoo Sahoo, his wife and sons inherited the property left by him. Original copy of Will is filed along with the probate. Chhathoo Sahoo died on 03.11.1998. Chhathoo Sahoo was not aware of law and as such he did not obtain probate certificate. After death of Chhathoo Sahoo, applicants were also not aware of law hence did not obtain probate

ACB - chhathoo

certificate. On 16.04.2012, the Opposite party No.1 filed a case of Jamabandi cancellation no. 5 of 2012-2013 before Additional Collector, Khagaria in which the applicants appeared and filed objection petition further they protested and found that a probate certificate is necessary. Two attested witnesses of the Will have already passed away.

3. Defendants have filed their objection/written statement on 05.04.2014 taking objections inter alia that the present suit is not maintainable. The same is barred by Limitation, nonjoinder and misjoinder of parties. Defendants have stated that Ramfalli Sah had one daughter namely Jaya Devi who was married with Kamleshwari Sah/Defendant No. 1. Since marriage with Jaya Devi Kamleshwari Sah was residing with Ramfalli Sah as *gharjamai*. Defendants have denied that Ramfalli Sah had executed a Will dated 05.04.1974 with respect to land mentioned in Schedule A of the plaint. Ramfalli Sah expired in the year 1980 not on 10.11.1974. Defendants further stated that Ramfalli Sah never asked scribe Bateshwar Prasad to write deed of Will in favour of Chhathoo Sah. Plaintiffs were never in possession over the property mentioned in Schedule-A of the plaint. Jamabandi was also cancelled by Additional Collector, Khagaria in Jamabandi Cancellation Case No. 05/12-13. Plaintiffs had never any title and possession over the disputed land. Jaya Devi did not execute any relinquishment deed dated 02.06.1985 in favour of Chhathoo Sah with respect to land measuring 14 katha 4 dhur 10 dhurki, 6 kattha 6 dhur 15 dhurki and 7 kattha 18 dhur. Jaya Devi and her husband

NCB

Kamleshwari were illiterate and they did not put any signature whereas signature of Kamleshwari Sah has been shown on the unregistered relinquishment deed.

ISSUES

4. On the pleadings of the parties following issues were settled on 07.04.2016

- (I) Whether the application as framed and filed is maintainable?
- (II) Whether the applicants have got any cause of action to sue?
- (III) Whether the application is hit by law of Limitation?
- (IV) Whether the application is hit by non-joinder and mis-joinder of parties?
- (V) Whether the application is hit by the principles of estoppel, waiver and acquiescence?
- (VI) Whether Ramfall Sah died on 10.11.1974 or in the year 1980?
- (VII) Whether the applicants are entitled for probate of WILL executed by Ramfall Sah as claimed?
- (VIII) Whether the deed of Will dated 05.07.1974 in favour of Chatthoo Sahoo is valid, legal and genuine?
- (IX) To what relief or reliefs the applicants are entitled to?

EVIDENCE

5. In order to prove their case, the plaintiffs got examined 8 witnesses.

They are:

P.W1: Mahendra Gupta

P.W.2: Bijo Sah

P.W.3: Ramchandra Mahto

P.W.4 : Janardan Kumar

P.W.5 :Jhingar Sah

P.W.6:Mahendra Muni

P.W.7:Subhash Sah

P.W.8: Binda Devi

They have also got exhibited following documents:

Ext. 1: Original Will dated 05.04.1974

Neel Kumar

Ext. 2: Certified copy of Order dated 16.10.2012 passed in Jamabandi Cancellation Case No. 05/2012-13

Ext.3: Certified copy of registered deed of will executed by Ramfal Sah in favour of Chhathoo Sahoo on 05.04.1974 bearing registratin No. (3)

Ext. 4 Certified copy of will dated 05.04.1974 in favour of Jaya Devi.

6. PW-1 has stated in his evidence by way of affidavit that Ramfalli Sahoo had executed two Wills on 05.04.1974 and one was in favour of his nephew/adopted son viz. Chhattoo Sahoo. On the same day he had executed another Will in favour of Jaya Devi. Both Wills were executed by Ramfalli Sahu with sound deposing mind and wish. P.W. 1 has further stated that at the time of execution of the Will Surendra Narayan Singh, Dineshwar Prasad, Ramfalli Sah, Jaya Devi and Kamleshwari Sah were present. On the instruction of Ramfalli Sahu scribe namely Bateshwar Prasad prepared the contents of the Wills and read over the same to all, then Ramfalli Sahu put his thumb impression in presence of witnesses. Dineshwar Prasad and Surendra Narayan Singh had put their signature as witnesses. On cross examination P.W. 1 has stated that mother of Chhatthoo Sah had expired in his childhood and he was brought up by Ramfalli Sahoo. He has further stated that Jaya Devi is daughter of Ramfalli Sah. He has stated that he had not seen any document regarding adoption by Ramfalli Sah. He has stated that he did not had any opportunity to get any document scribed by Bateshwar Sah deed writer. He has stated



that Will was read and written before him. It was written in Gogari Registry Office.

7. P.W. 2 is Bijo Sah. He has stated in his evidence by way of affidavit that Ramfalli Sahoo had executed a Will on 05.04.1972 in favour of his nephew Chhatu Sah with healthy mind voluntarily which was scribed by Bateshwar Prasad deed writer. P.W. 2 has further stated that on the instruction of Ramfalli Sahu, Bateshwar Pd. Deed writer had prepared the Will and thereafter contents of the same were read over to him and after finding the same as correct Ramfalli Sahu had put his thumb impression over the same which was identified by Dineshwar Pd., Ramfalli Sahu, Surendra Narayan Sah and Dineshwar Pd. put their signature as witnesses, scribe Bateshwar Prasad also put his signature in presence of P.W. 2. He has stated that Ramfalli Sahu, Dineshwar Prasad, Sunrendra Narayan Singh, Bateshwar Prasad, Chhattu and Jaya Devi all have expired. On cross examination P.W. 2 has stated that Ramfalli Sahoo was not educated. He has further stated that Will was written in his presence at Gogari.
8. P.W. 3 is Ramchandra Mahto. He has stated in his evidence by way of affidavit that in 1974 Ramfalli Sah had executed registered Will in favour of Chhatthu Sah and Jaya Devi. He has further stated that Chhatthu Sah and others sold 4 kattha 19 dhur 6 dhurki land to him on 24.06.1996 through registered sale deed. On cross examination P.W. 3 has stated that Ramfalli Sah had two brothers. Ramfalli Sah had no son and one daughter. He has stated that he has seen the Will but does not know who were the witnesses of the same. He does not



remember the name of scribe. The same was not written in his presence.

9. P.W. 4 is Janardan Kumar. He has stated in his evidence by way of affidavit that Ramfalli Sah had executed two registered Wills in favour of Chhatthu Sah and Jaya Devi respectively with sound disposing state of mind and voluntarily. He has purchased 4 kattha land from Chhattu Sah. On cross examination P.W. 4 has stated that he had no opportunity to see the Will in question. He has stated that he does not know who are witnesses of the Will.
10. P.W.5 is Jhingar Sah. He has stated in his evidence by way of affidavit that in 1974 Ramfalli Sah had executed a registered Will with his sound disposing state of mind and voluntarily in favour of his nephew Chhattu Sah. On cross examination P.W. 5 has stated that he does not know the meaning of Vasiatnama. He has further stated that he did not had any of the opportunity to see the Will.
11. P.W. 6 is Mahendra Muni. He has stated in his evidence by way of affidavit that Ramfalli Sah had executed registered Will deed in favour of his nephew Chhattu Sah with sound disposing mind and voluntarily. On cross examination P.W. 6 has stated that he had no opportunity to see the Will deed. He has further stated that he does not know the meaning of Vasiatnama. P.W. 6 has stated that Will was not written or read in his presence. He does not know who are the witnesses of the same.
12. P.W. 7 is Subhash Sah. He has stated in his evidence by way of affidavit that Bateshwar Prasad had scribed Will dated 05.04.1974 in



favour of Chhattu Sah on the instruction of Ramfalli Sah. He has stated that contents of the Will was read over by the scribe to Ramfalli Sah who put his left thumb impression on each five papers on the Will. Thumb impression of Ramfalli Sah was identified by Dineshwar Prasad where Surendra Prasad had put his signature as attesting witness. P.W. 7 has stated that scribe had prepared the draft of the Will in his presence where identifier and witnesses had put their signature in his presence. He has further stated that testator, witnesses, scribe and identifiers have expired. On Cross examination P.W. 7 has stated that he is not a witness to the Will deed. He has stated that he has not got prepared any document by scribe Dineshwar Prasad. He has stated that he does not know when Surendra Prasad and Dineshwar Prasad had died.

13. P.W. 8 is Binda Devi. She has stated in her evidence by way of affidavit that she is plaintiff No. 1. She has further stated that testator was brother of her father-in-law who had no son and one daughter. She has further stated that Ramvali Sah had executed two registered deeds one in favour of her husband and other in favour of his daughter Jaya Devi. On cross examination P.W. 8 has stated that she does not know the meaning of Vasiat. She has further stated that Vasiatnama was prepared in her presence and she was in Registry Office. She does not know the contents of Vasiatnama. She has stated that scribe Bateshwar has died. She has stated that Dineshwar Prasad and Surendra Singh are witnesses to the Will. She has stated that she

N. Chatterjee

had also witnessed the Will. She has stated that she can not tell that Vasiatnama is related to the land of which khata and khesra.

14. Defendants in their evidence got examined 7 witnesses. They are:

D.W.1 : Md. Sainul

D.W.2 : Brijnandan Singh

D.W.3 : Ashok Sah

D.W.4: Sikandar Sah

D.W.5 : Lalan Kumar

D.W.6 : Krishn Murari Kumar

D.W.7 : Pramod Kumar Singh

They have also got exhibited following documents:

Ext. A: Original Will dated 05.04.1974

Ext. B: Certified copy of Final Report of Chautham P.S. Case No.103/2014

Ext. C: Order dt. 24.07.2024 in Jamabandi cancellation Revision No.33/2022

Ext. D: Order dated 27.08.2019 in Jamabandi cancellation No.02/2022

Ext. E: Order dt. 16.10.2012 in Jamabandi Fragmentation Case No. 5/2012-13

Ext. F: Order dt. 28.09.2001 in Mutation of Property Case No. 356/2001-2002

Ext. G: Order dt. 28.09.2001 in Mutation of Property Case No. 357/2001-2002




15. DW-1 is Md. Sainur. He has stated in his evidence by way of affidavit that Ramfall Sah did not give any land to Chhattu Sah through gift or Will. On cross examination D.W. 1 has stated that Kamleshwari Sah is entitled to the land of Ramfall Sah.
16. D.W. 2 is Brijnandan Singh. He has stated in his evidence by way of affidavit that Chhattu Sah has no concern with the land of late Kamleshwari Sah. He has stated that Ramfall Sah has not given his land to Chhattu Sah through gift or Will. On cross examination D.W. 2 has stated that he has not seen the Will executed by Ramfall Saw.
17. D.W. 3 is Ashok Sah. He has stated in his evidence by way of affidavit that he is defendant No. 3. His father late Kamleshwari Sah had married with Jaya Devi. He has stated that his mother Jaya Devi had ownership on the property of his maternal grandfather Ramfall Saw. He has stated that Ramfall Saw had not executed any Will in favour of Chhattu Sah. On cross examination D.W. 3 has stated that he had attended the last rites of Ramfall Saw. He has stated that he does have any knowledge that Will was prepared by impersonation.
18. D.W. 4 is Sikandar Sah. He has stated in his evidence by way of affidavit that he is defendant No. 2 in this case. He has stated that late Kamleshwari Sah was his father whereas Jaya Devi was his mother. He has stated that his maternal grand father did not had any son therefore, he had kept his father in his house as *Gharjamai*. He has stated that after death of his maternal grandfather his mother Jaya Devi became owner of his properties. He has stated that his maternal grandfather did not execute any Will in favour of Chhattu Sah. On

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cross examination P.W. 4 has stated that Ramfall Saw did not execute any Will in favour of Chhattu Sah whereas he had executed a Will in favour of Jaya Devi.

19. D.W. 5 is Lalan Kumar. He has stated in his evidence by way of affidavit that Kamleshwari Sah was kept as Gharjamai by Ramfall Sah. He has stated that Ramfall Sah did not give any land to Chhattu Sah through gift or Will. On cross examination D.W. 5 has stated that Kamleshwari Sah is son-in-law of Ramfall Saw and Jaya Devi is daughter of Ramfall.
20. D.W. 6 is Krishn Murari Kumar. He has stated in his evidence by way of affidavit that Kamleshwari Sah was his father and Jaya Devi was his mother. He has further stated that his maternal grandfather had kept his father as Gharjamai and after death of Ramfall Saw his mother Jaya Devi became owner of the properties. He has further stated that his maternal grandfather had not executed any Will in favour of Chhattu Sah. He has stated that his mother had not executed any relinquishment deed. On cross examination D.W. 6 has stated that he has concern with the land of Ramfall Sah as Will is in the name of his mother. He has further stated that he does not have any knowledge of Ramfall Saw executing any Will in favour of his brother.
21. D.W. 7 is Pramod Kumar Singh. He has stated in his evidence by way of affidavit that he identifies the signature of scribe Bateshwar Prasad. He has further stated that original Will document No. 3 dated 05.04.1974 is in writing of scribe Bateshwar Prasad who had scribed



the same on the instruction of Ramfalli Saw in favour of Jaya Devi. On cross examination D.W. 7 has stated that during writing of the Vasiatnama he was at the southern side of Registry Officer of Khagaria. He has not studied with Bateshwar Prasad. He has further stated that he does not know the house of Ramfalli Sah.

ARGUMENTS ON BEHALF OF PLAINTIFFS

22. Ld. Counsel for plaintiffs has submitted that plaintiffs have filed present suit seeking probate of the registered Will dated 05.07.1974 executed by Ramfall Sah in favour of Chathoo Sah. Ld. Counsel has further submitted that attesting witnesses and scribe of the Will are dead and plaintiffs have proved the execution of Will by examining witnesses who had seen the execution of the same. Ld. Counsel has submitted that there is no limitation for filing probate case. He has submitted that plaintiffs have proved that the subject Will is valid, legal and genuine.

ARGUMENTS ON BEHALF OF DEFENDANTS

23. Ld. Counsel for defendant has submitted that plaintiffs have failed to prove the execution of the Will and also that it was valid or genuine. Ld. Counsel has submitted that probate case is time barred and it is hit by non joinder and mis joinder of the parties. He has further submitted that probate case can not be filed by the legal heirs of the executor of the Will.

N. B. Chakraborty

DISCUSSION, DECISION AND REASONS THEREOF

ISSUE NO.1

“Whether the application as framed and filed is maintainable?”

24. Plaintiffs claim that one Ramfalli Sah had executed a registered Will (Ext. 1) on 05.04.1974 in favour of his nephew Chhattho Sah. Chhattho Sah has expired and the plaintiffs are his wife and children respectively. They have filed probate petition seeking probate of aforesaid Will executed in favour of Chhattho Sah. Now this Court has to see whether the legal heirs of executor can maintain the probate petition.
25. As per Section 2 (f) of the Act “probate” means the copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator. Now issue is that whether the legal heirs of legatee are competent to file the probate petition. Section 2 (h) of the Act defines “Will” and states that it is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. As per Will/Ext. 1 this legal declaration is in favour of Manik Mandal not in favour of the plaintiffs. Section 276 (1) (e) of the Act states that when the application for probate is filed, the petitioner is the executor of the Will must be mentioned in the same.
26. Section 222 of the Act says that the probate shall be granted only to the executor appointed by the Will. Here executor is Manik Mandal and he has already expired. In this regard judgment of Hon’ble Patna

Neel Kumar

High Court in Sanjay Tribedi alias Munna Tribedi vs Kanti Devi &

Anr. 2024 SCC OnLine Pat 8327 is referred:

6. Reading of Section 222 of the Act makes it amply clear that probate shall be granted only to an executor appointed by the Will. Thus, the right to obtain a probate is confined to the executor and it can by no means devolve upon the heir of the executor appointed by the will as held by the Division Bench of this Court in the case of Musammat Phekni v. Musammat Manki, 1929 SCC OnLine Pat 113 : AIR 1930 Pat 618. On the same proposition, reliance could be placed on another decision of Division Bench of this Court in the case of Bihari Lal Mahton Tetak Gayawal v. Ganga Dai Tatkain, AIR 1917 Pat 209. Thus, after the death of the executor and before the Will could be proved no beneficiary or claimant can be permitted to get himself or herself substituted in place of the executor. In other words, the probate proceedings come to an end with the death of the executor. Furthermore, the substitution of heirs/legal representatives of an executor is not permissible in a probate proceeding though such heirs/legal representatives could maintain a petition under Section 276 of the Act for grant of letters of administration.

27. In view of above discussion this Court arrives at conclusion that this probate case filed under Section 276 of the Act is not maintainable by the legal heirs of the executor of the Will.

ISSUE NO.II

(II) Whether the applicants have got any cause of action to sue?
&

ISSUE NO. III

(III) Whether the application is hit by law of Limitation?

28. Plaintiffs have filed present probate case seeking certificate of Will claiming the same was executed in favour of Chhattho Sah who was husband of plaintiff No. 1 and father of plaintiff Nos. 2 and 3. They have stated in the plaint that on 16.04.2012 defendant No. 1 had filed a case of Jamanandi Cancellaton No. 5/2012-13 before Additional Collector Khagaria in which plaintiffs appeared and filed an objection and found that a probate certificate is necessary to contest the aforesaid case which necessitated the filing of the present case.

Thus, there is cause of action for filing this probate case.

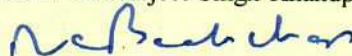
Neelendra Chandra

29. In the present case the Testator had died on 10.11.1974. Executor of the Will has died on 03.11.1998 . This probate case has been filed on 16.11.2012. Ld. Counsel for defendant has strenuously argued that this suit is highly time barred whereas the Ld. Counsel for the plaintiffs has submitted that there is no limitation for filing probate case as there is continuous cause of action for filing of the same and Article 137 of the Limitation Act is not applicable in the probate case.
30. Hon'ble Patna High Court in Arun Kumar Agarwal vs Anil Agarwal 2018 SCC OnLine 2070 while discussing law of limitation w.r.t. probate case has held that:

8. According to Article 137 of the Limitation Act, any other applications for which no period of limitation is provided elsewhere in this division, the period of limitation is three years from the date and the period of limitation begins to run when the right to apply accrues. The crucial expression in the aforesaid provision is when the right to apply accrues. Admittedly in an application for probate of Will, or for issuance of letter of administration or for issuance of succession certificate, the cause of action is continuing one because if by a Will trusteeship is created, the trustee under the Will has got right to manage the property unless the same is approved by the Court. Similarly in the petition for issuance of succession certificate the cause of action is continuing one unless the successor or the heirs of the deceased get the succession certificate with regard to the property left by the deceased. A Division Bench of this Court in the case of Ramanand Thakur v. Parmanand Thakur (supra) held that in a probate case the right to apply accrues each and every day so long as the Will remains unprobated. A Single Bench of this Court in the case of Smt. Nalini Mishra v. Braj Kishore Mishra (supra) after judgments of the Hon'ble Supreme Court rendered in Kunvarjeet Singh Khandpur v. Kirandeep Kaur (supra) has held that the cause of action accrues when any hindrance is put to the legatee in management of the property bequeathed by a Will and not immediately after the death of the propounder of the Will. In the case of Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani (supra), the conclusion was summarized as follows:—

- (a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;
- (b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;
- (c) such an application is for the court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;
- (d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death;
- (e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;
- (f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and
- (g) once execution and attestation are proved, suspicion of delay no longer operates.

9. The Hon'ble Supreme Court in the case of Kunvarjeet Singh Khandpur v. Kirandeep



Kaur (supra) after taking into consideration the conclusions summarized by the Bombay High Court in the case of Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani (supra) held that conclusion (b) is not correct while conclusion (c) is correct position of law. It appears that the learned counsel for the petitioner laid emphasis on the conclusion of the Hon'ble Supreme Court that the conclusion arrived at by the Bombay High Court in conclusion (b) was found to be incorrect, therefore, it can safely be inferred that the limitation under Article 137 of the Limitation Act shall start running on the date of the death of the deceased but in my view this submission cannot be accepted as the Hon'ble Supreme Court has found the conclusion (c) is correct which says as "such an application is for the court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed". From the perusal of the aforesaid conclusion no doubt remains as to when the cause of action accrues for filing the probate case. The Hon'ble Supreme Court on the basis of such conclusion held in the case of Kunvarjeet Singh Khandpur v. Kirandeep Kaur (supra) that the probate case was firstly filed but withdrawn on 09.08.1999. Thereafter another petition for probate was filed within three years from the date of the withdrawal of the probate case, i.e., 09.08.1999 and it was held that the petition was filed within three years, therefore, the same is within time. In the aforesaid case the Hon'ble Supreme Court also held that the limitation did not start running immediately after the death of the testator but the first petition of probate was filed and the same was withdrawn on 09.08.1999, therefore, the cause of action accrued on 09.08.1999 and the second petition for probate was filed within three years it was held that the same is within time. Similar view has been reiterated by the Hon'ble Supreme Court in the case of Krishna Kumar Sharma v. Rajesh Kumar Sharma (supra) and it has been held that in the probate case the date of action accrues not on the date of death of the testator but the right to apply accrues varies in each and every case. Thus, I find that in view of the law laid down by the Hon'ble Supreme Court as well as by the Division Bench and the Single Bench of this Court discussed above, the learned 2nd Additional District Judge, Muzaffarpur has rightly held that the probate case is not liable to be dismissed under Order VII Rule 11(d) of the CPC read with Article 137 of the Limitation Act because the cause of action accrues not after the death of the testator but it depends on the facts of each and every case as to when cause of action accrues.

31. As there is no limitation for filing the probate case, thus the present suit is not barred by time.

ISSUE NO. 6

Whether Ramfall Sah died on 10.11.1974 or in the year 1980?

ISSUE NO. 7

Whether the applicants are entitled for probate of WILL executed by Ramfall Sah as claimed?

&

ISSUE NO. 8

Whether the deed of Will dated 05.07.1974 in favour of Chatthoo Sahoo is valid, legal and genuine?

32. Factum of death of Ramfalli Sah is not disputed. His date of death does not have much importance in disposal of the present suit.

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Defendants have stated in their written statement/objection that Chhatthoo Sah got prepared forged and fabricated Will by impersonating some person as Ramfall Sah. Thus, this Court has to see that whether the alleged Will dated 05.07.1974 executed by Ramphal Sah in favour of Chhatthoo Sah is valid, legal and genuine.

33. Plaintiff mentions that Dinesh Prasad and Surendra Singh are attesting witnesses to the subject Will whereas Bateshwar Prasad is deed writer. It also mentions that the executor passed away on 10.11.1974. Suit was filed on 16.11.2012. P.W. 2 has stated in his evidence by way of affidavit that attesting witnesses Dineshwar Prasad and Surendra Narayan Singh as well as scribe Bateshwar Prasad all have expired. Other plaintiff witnesses have not stated that the attesting witnesses and scribe have expired.
34. It has come first time in the evidence of P.W. 2 that attesting witnesses and scribed have passed away. There is nothing on record showing the death of these witnesses. None other than P.W. 2 has stated about the death of these witnesses. Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act prescribe the requirements to prove the Will. Section 69 of the Evidence Act has provision where there is no witness of Will is alive.
35. Section 63 of the Act provides how a Will can be executed.

"63 Execution of unprivileged Wills - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 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 directions.
(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 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".

Provisions of Section 68 of the Indian Evidence Act says how a Will can be proved. This Section states that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness 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. Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of Indian Registration Act, 1908 unless its execution by the person by whom it purported to have been executed is specifically denied.

36. In *Meena Pradhan v. Kamla Pradhan*, (2023) 9 SCC 734 the Hon'ble Supreme Court deduced the principles in order to prove the Will and the same is as under; -

10.1. The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the 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 a 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 witnesses 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 acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the



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testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277] ". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

11. 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.

37. *Krishna Kumar Birla v. Rajendra Singh Lodha*, (2008) 4 SCC 300

Hon'ble Supreme Court has held that:

"The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the Will."

"A question of title arising under the Act cannot be gone into the proceedings. Construction of a Will relating to the right, title and

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interest of any other person is beyond the domain of the Probate Court."

38. It is settled law that the initial burden is always upon the propounder of the Will i.e. petitioner to prove the due execution of Will by the deceased, Voluntarily and in sound disposing state of mind and to dispel all the suspicious circumstances, if any, by giving a cogent and convincing explanation. It is also settled law that being a probate court this court has only to decide whether the document put before it is a legal and valid Will of the deceased or not. The questions relating to the title of the deceased in the properties bequeathed by way of execution of Will are alien to the Probate jurisdiction.
39. As attesting witnesses Dinesh Prasad and Surendra Singh as well as the Deed writer Bateshwar Prasad have already expired, then Section 69 of the Indian Evidence Act comes into play. It says that if no attesting witness can be found, it must be proved that the attestation of one attesting witness at least in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.
40. P.W. 2 has stated in his cross examination that Will was prepared in his presence. He has not identified signatures of testator or attesting witnesses or scribe in Will i.e. Ext. 1. P.W. 8 who is plaintiff No. 1 has stated on cross examination that Will was written and read in her presence and she was also present in the Registry Office. She has stated that scribe and witnesses of the Will have expired. She has stated that she does not know the meaning of Vasiat. Plaintiffs have



examined total eight witnesses but none of them has identified signature of the testator, scribe and attesting witnesses. Thus, the execution of subject Will does not stand on the scrutiny of the Section 63 of Indian Succession Act and Section 68 & 69 of the Indian Evidence Act. Thus, this Court arrives at the conclusion that subject Will dated 05.04.1974 is not valid, legal and genuine and applicants are not entitled for probate of the same.

41. Issue Nos. 1, 7 and 8 were core issues and they have been decided against the plaintiffs, therefore, there is no need to venture into other issues.

ORDER

42. In view of above discussion present Suit i.e. T.S. 02/2025 arising out Probate Case No.11/2012 is **dismissed** on contest.

Decree be prepared. Pronounced in the Open Court.

Dictated and corrected by me

Dictated




(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.

(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.

Dated: 23.03.2026

Dated: 23.03.2026

Date of Judgment	23-03-2026
Date of Reserving Judgment	19-03-2026
Uploading Date	02-04-2026
Uploaded by	Sushant Kumar (D.E.O)