

BRKH010013732023



Presented on : 04-10-2018
Registered on : 04-10-2018
Decided on : 23-03-2026
Duration : 7 years, 5 months, 19 days

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

Presided Over by Shri Rajesh Kumar Bachchan

Title Suit No. 01/2023

Arising out of Probate Case No. 2/2011

IN THE MATTER OF:-

1. Bhawani Devi

W/o- Late Manik Mandal

2. Sudil Kumar

3. Lalan Kumar

4. Shailendra Kumar

Sons of Late Manik Mandal

All R/o- vill. Baisa, P.S. Parbatta,

Pargana- Farkiya, District-Khagaria

.....Plaintiffs

Versus

1. Yogendra Tiwary

2. Bijay Tiwary

S/o- Late Saryug Mandal

R/o- vill. Jhanjhara, P.S. Pasraha, District- Khagaria

3. Kailash Prasad,

3A. Rambalak Prasad

Both S/o-Muneshwar Mandal,

R/o- Madarpur, P.S. Maheshkhunt,

District- Khagaria

3B. Salita Devi

W/o- Arbind Chaurasia,

R/o- Jhanjhara, P.S. Pasraha, Distt.- Khagaria

RC Bachchan

Title Suit No. 1/2023

Bhawani Devi and Ors Vs. Yogendra Tiwary & Ors.

Date of Judgement : 23.03.2026

3C. Manju Devi

W/o- Ramdeo Chaurasia,

R/o-Sobhani, P.S.+District- Khagaria

3D. Sunita Devi

W/o- Mahendra Chaurasia, R/o- Khatha, P.S. Gogri,

District- Khagaria.

4. Anand Mandal, S/o- Dhoot Narayan Mandal

R/o- vill. Gauchhari, P.S. Gogri, Pargana- Farkiya, District- Khagaria

.....Defendant First Party

5. The Estate of Late Jeebu Mandal, S/o- Late Panchu Mandal,

R/o- vill. Baisa, P.S.- Parbatta, Pargana- Farkiya, District-Khagaria

...../Defendant Second Party

Appearance:

Sh. Sanjay Kumar, Ld. Counsel for plaintiffs

Sh. Anadi Gopal, Ld. Counsel for defendant No.4

None for others

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

1. Plaintiffs have filed present suit on 17.06.2011 under Section 276 of the Indian Succession Act, 1925 (hereinafter referred as 'the Act') seeking probate of Will dated 10.01.1953 executed by late Sh. Jeebu Mandal u/s 276 of Indian Succession Act, 1925 in favour of Manik Mandal pleading it was the last testament of the testator and they are legal heirs of Manik Mandal.

BRIEF FACTS OF THE CASE

2. Succinctly the case of the plaintiffs is that one Jeebu Mandal, S/o- Panchu Mandal, R/o- Vill. Baisa, Pargana- Farkiya, District- Munger, at present Khagaria was the owner of the land measuring 05 Bigha 14 kathas 16 Dhurs 10 Dhurkis land of Mouza- Baisa, Pargana- Farkiya, District- Munger at present Khagaria, the details of the same is given in Schedule 'A' of the plaint. Jamabandi was also created in his name

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and he was paying rent and getting receipt from the Anchal Serista of Bihar Govt. Jeebu Mandal had no son and had two daughters- Domani Devi and Radha Devi. Domani Devi died leaving behind her two sons Yogendra Tiwary and Bijay Tiwary. Radha Devi had also two sons- Anand Mandal and Subodh Mandal. After death of mother of Domani Devi and Radha Devi their father Jeebu Mandal remarried with the mother of Manik Mandal and adopted Manik Mandal as his son. Jeebu Mandal was very pleased with the services of Manik Mandal and executed a registered Deed of Will on 10.01.1953 with respect to his self acquired property i.e. Schedule 'A' property. It was the last Will of testament of the testator and was executed in presence of the witnesses Baldeo Lal resident of Baisa and Baleshwar Prasad but the aforesaid witnesses as well as the Deed writer Bhuneshwar Prasad have already expired. Jeebu Mandal died on 02.02.1960 and after his death Manik Mandal came in possession over Schedule 'A' property. Anchal Adhikari, Gogri on the basis of the aforesaid Deed of Will passed the order to mutate the name of Manik Mandal with respect to the aforesaid 02 Bigha 02 Kathas land out of Schedule 'A' property. Certified copy of Will has been filed. Jamabandi No. 125 B/R is still running in the name of Manik Mandal for 02 Bighas 02 Kathas land which is the part and parcel of 05 Bighas 4 Kathas 16 Dhurs 10 Dhurkis land mentioned in Schedule 'A'. Manik Mandal was very simple man and had no knowledge of law and technicalities and as such no step for probate was taken earlier by him. After the death of Manik Mandal these plaintiffs succeeded the property left by Manik Mandal along with the subject property mentioned in the Deed of will and are coming in possession over the same.



3. Defendant Nos. 1 & 2 have filed joint written statement supporting case of the plaintiffs. This case has been contested by the defendant No.4 viz. Anand Mandal only.
4. Written statement on behalf of defendant No.4 was filed on 21.02.2015 taking objections inter alia that this case is hopelessly barred by the law of Limitation. It is also barred by non-joinder of necessary parties. Opposite party No. 3 Radha Devi died in the year 1981 and she has also been made party of this case. This case cannot proceed against a dead person and stands abated and should be dismissed on this score alone. Jeebu Mandal in fact had two daughters Domani Devi and Radha Devi. Domani Devi had not only two sons rather one daughter also. Likewise Radha Devi had not only two sons rather four daughters also. It is quite incorrect to say that Jeebu Mandal had ever adopted Manik Mandal. Manik Mandal never lived with Jeebu Mandal. No Will was executed by Jeebu Mandal much less on 10.01.1953. In fact Jeebu Mandal died in the year 1959 but it is quite false to say that Manik Mandal ever came to possess any land as described in Schedule 'A' of the Probate petition. No original Will was ever produced during the proceeding before any revenue authority. If any jamabandi has been brought into existence that must be the result of fraudulent act on the part of Manik Mandal. As a matter of fact Manik Mandal or these petitioners never got any concern with the property of Jeebu Mandal which is in continuous possession of the descendants of Jeebu Mandal.

ISSUES

5. On the pleadings of the parties following issues were settled on 18.04.2024:

1. Is this case maintainable?

Refuted

2. Have the plaintiffs got cause of action to file this case?
3. Whether this case is hit by the principles of estoppels, waiver and acquiescence?
4. Whether this case is barred by the provision of law contained in Indian Limitation Act?
5. Whether the case is hit by the non-joinder of necessary parties?
6. Whether the alleged deed of Will dated 10.01.1953 was executed by Jeebu Mandal?
7. Whether the alleged deed of Will dated 10.01.1953 said to be executed by Jeebu Mandal is legal, genuine and last testament of the Executor and whether the same was executed by him consciously and in sound health and mind?
8. To what other relief the plaintiffs are entitled?

EVIDENCE

6. In order to prove their case, the plaintiffs got examined five witnesses. They are:

P.W1: Sudil Kumar

P.W.2: Shailendra Kumar

P.W.3: Lalan Kumar

P.W.4 : Bhaddar Pandit

P.W.5 : Kaushal Mandal

They have also got exhibited following documents:

Ext. 1: Certified copy of Will

Ext. 2: Death certificate of Jeebu Mandal

7. PW-1 has stated in his evidence by way of affidavit that he is plaintiff No.2. He has further stated that land mentioned in Schedule-A of the plaint was exclusive property of Jeebu Mandal. He has further stated that Jeebu Mandal has no son but two daughters and they were Domani Devi and Radha Devi. Radha Devi has already expired leaving behind his sons Yogendra Tiwari and Vijay Tiwari. Radha Devi has also two sons namely Anand Mandal and Subodh Mandal. P.W.1 has further stated that Jeebu Mandal and his grand mother had married and Jeebu Mandal had kept his father and brought up him as his son. After being pleased by the services rendered by Manik Mandal, Jeebu Mandal executed a registered Will in 1953 related to the property

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mentioned in Schedule-A of the plaint. P.W.1 has stated that Baldev Lala and Baleshwar Prasad were witnesses to the Will and it was scribed by Bhuneshwar Prasad Deed Writer. These all witnesses and Deed Writers are dead. Jeebu Mandal also expired on 02.02.1960. He has further stated that during Jamabandi Correction Appeal No. 16/1999-2000 an issue was raised that Will was not probated. P.W.1 has stated that original Will was with his father but it was lost somewhere.

On cross examination P.W.1 has stated that Sarjug Mandal had two daughters and one has expired and his alive daughter is Chanki Devi. P.W.1 has stated that he cannot file the original Will as it was lost. P.W.1 has further stated that he does not have any evidence that his grandmother had married with Jeebu Mandal he has stated that he cannot file any documentary evidence regarding Jeebu Mandal adopting his father. He has stated that Manik Mandal is originally resident of Gauchhari.

8. P.W.2 is Shalendra Kumar. He has stated in his evidence by way of affidavit that he is plaintiff No.4. His affidavit is recitation of plaint. On cross examination P.W.2 has stated that Jeebu Mandal had two daughters Domani Devi and Radha Devi. He has stated that Domani Devi had two sons and one daughter. P.W.2 has stated that Manik Mandal was residing with Jeebu Mandal since his childhood. He has stated that he has not seen any original Will executed by Jeebu Mandal. He further stated that he had opportunity to see Will related with the disputed land. He has stated that he cannot produce any document relating Jeebu Mandal adopting his father.

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9. P.W.3 is Lalan Kumar. He has stated in his evidence by way of affidavit that he is plaintiff No.3. He has reiterated the contents of plaint in his evidence by way of affidavit. On cross examination P.W.3 has stated that defendant Anand Mandal has four sisters and among them two are dead. He has stated that Jeebu Mandal had accepted Manik Mandal as his adopted son in 1953 but document has been lost.
10. P.W.4 is Bhaddar Pandit. He has stated in his evidence by way of affidavit that he is permanent resident of Village Baisa. He has further stated that Jeebu Mandal was his villager and had no son. He has stated that Jeebu Mandal had married with mother of Manik Mandal and was treating Manik Mandal as his son. He has stated that Jeebu Mandal had executed a Will with respect to land located in Mauza Baisa measuring 5 Bigha 6 Kattha. P.W.4 has stated that Late Baldev Lal was his villager who told him that Jeebu Mandal had executed a Will in favour of Manik Mandal. On cross examination P.W.4 has stated that Jeebu Mandal had three daughters and he does not know their names. He has further stated that Manik Mandal had never talked with him regarding Will. He has stated that he knew Baldev Lal but had never any talk with him. He even did not have ever any talk with Jeebu Mandal.
11. P.W. 5 is Kaushal Mandal. He has stated in his evidence by way of affidavit that he is resident of village Baisa. He has stated that Jeebu Mandal was his villager and does not have any son. P.W.5 has stated that Jeebu Mandal had married with the mother of Manik Mandal and he was keeping him as his son. He has stated that Manik Mandal had performed last rites of Jeebu Mandal. Jeebu Mandal has executed Will in favour of Manik Mandal. On cross examination P.W.5 has stated

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that he had never any opportunity to have a talk with Jeebu Mandal.

He did not have any opportunity to see the Will also.

12. Defendant No.4 has examined himself as only witness from his side as D.W.-1. D.W.1 has stated in his evidence by way of affidavit that his maternal grandfather had two daughters namely Domani Devi and Radha Devi. Domani Devi had two sons and one daughter whereas Radha Devi had two sons and four daughters. He denied that Jeebu Mandal had performed second marriage and adopted Manik Mandal as his son. He has stated that after death of Jeebu Mandal his mother and aunt (Mausi) came into right and possession. He has stated that Jeebu Mandal was very old and not well in 1953. He denied that Manik Mandal was adopted son of Jeebu Mandal and Jeebu Mandal had ever executed any Will in favour of Manik Mandal. On cross examination on behalf of plaintiff D.W.1 has stated that his mother was Radha Devi and aunt was Late Domani Devi. Domani Devi had three children namely Yogendra Tiwari, Vijay Tiwari and Kari Devi. He has stated that he is contesting this case as Jeebu Mandal had never executed any Will.

Defendant No.4 has got exhibited following documents:

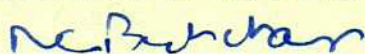
Ext. D4/A: Certified copy of order dated 02.07.2013 passed in connection with Jamabandi Appeal No. 16/99-2000

Ext. D4/B: Certified copy of order dt. 13.12.2022

Ext. D4/C: Certified copy of certificate issued by Registry office

ARGUMENTS ON BEHALF OF PLAINTIFFS

13. Ld. Counsel for plaintiffs has submitted that the plaintiffs have proved that they are descendants of Manik Mandal who was adopted by Jeebo Mandal and executed a Will dated 10.01.1953 in his favour w.r.t.



property mentioned in the Schedule –A of the plaint. Ld. Counsel has further submitted that the plaintiffs have proved that the said Will was valid and genuine.

ARGUMENTS ON BEHALF OF DEFENDANT NO.4

14. Ld. Counsel for defendant has argued that this probate case as framed and filed is not maintainable and the plaintiffs have no right to file this probate case and this case is hopelessly barred by the Law of Limitation as the plaintiffs themselves pleaded that Jeebu Mandal died on 02.02.1960 and even if there was any Will execution of the same is completely denied. This case is fit to be dismissed on the ground of non-joinder of necessary parties. Radha Devi died in the year 1981 but she has been arrayed as Opposite Party No. 3. Jeebu Mandal owned and possessed the Schedule A land but he did not remarry and adopted Manik Mandal. Execution of any Will by Jeebu Mandal is false. Opposite Party No. 4 has been in continuous possession of the Schedule -A land.
15. Ld. Counsel for defendant No.4 has submitted that this case has been filed under Section 276 of the Indian Succession Act which is not tenable because this case has not been filed by the alleged legatee. Admittedly the alleged legatee died in the year 2009 prior to filing to this case. It is settled law that the right to file a case of probate will extinct with the death of legatee as the provision given out in Section 222 of Indian Succession Act provides that "Probate can only be granted to a executor appointed by a will." Thus, this provision restricts from granting probate to other than the named executor. As such in the light of this provision this case is neither maintainable nor

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the plaintiffs got any right or cause of action to file this case for probate.

16. Ld. Counsel has submitted that in present case Article 137 of Indian Limitation Act is applicable and a probate case can be filed only within three years from the death of executant of Will Jeebu Mandal who died on 02.02.1960 and thereafter the probate application must have been filed by the alleged legatee by 02.02.1963.
17. Ld. Counsel for defendant No.4 has further submitted regarding Issue No. 5 that Manik Mandal had three daughters and Domani Devi had also a daughter as well as Radha Devi had four daughters but these daughters have not been arrayed as party.
18. For Issue Nos. 6 and 7 it has been submitted that the same cannot be decided in favour of the plaintiffs when issue Nos. 1, 2, 4 and 5 are against them. Moreover, the plaintiffs did not produce the original WILL in question. Defendant No.4 has brought Ext. C on record which is certificate issued by the Registry Office, Munger in which it has been certified that the Index-D of the period from 1931 to 1970 was searched but no document was found executed in the name of Manik Mandal.
19. Ld. Counsel has further submitted that a "WILL" can not be considered when the same is not proved as per the provision given out in Section 68 and 69 of Indian Evidence Act.

DISCUSSION, DECISION AND REASONS THEREOF

ISSUE NO.1

"Is this case maintainable?"

20. The present probate petition has been filed without producing original Will. Plaintiffs have placed on record the certified copy of Will dated

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10.01.1953 which is in favour of Manik Mandal. Plaintiffs claim that they are legal heirs of executor, though no documentary evidence has been placed on record. Plaint mentions that during mutation proceeding original Will was misplaced by Manik Mandal. No evidence has been adduced by the plaintiffs regarding destruction or loss of the Will. Permission for secondary evidence has also not been taken.

21. Testator died on 02.02.1960 as per death certificate/Ext.2 whereas as per plaint executor died in year 2009 in Kolkata. There is no documentary evidence for the date of death of executor. Probate petition was not filed during his life time.
22. 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 is for probate, that the petitioner is the executor of the Will must be mentioned in the petition for probate.
23. 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 High Court in Sanjay Tribedi alias Munna Tribedi vs Kanti Devi & Anr.

2024 SCC OnLine Pat 8327 is referred:

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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.

24. 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.2

Have the plaintiffs got cause of action to file this case?

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ISSUE NO.4

Whether this case is barred by the provision of law contained in the Limitation Act?

25. Plaintiffs have filed present probate case seeking certificate of Will claiming the same was executed in favour their ascendant viz. Manik Mandal. They have stated that during course of hearing in Revenue Correction Jamabandi Appeal No.16/99-2000 matter of probate was raised by the opposite parties which necessitated the filing of the present case. Thus, there is cause of action for filing this case.
26. In the present case the Testator had died on 2.2.1960. Executor of the Will has died in year 2009. This probate case has been filed on 17.06.2011. Ld. Counsel for defendant has strenuously argued that this suit is highly time barred whereas the Ld. Counsel for the plaintiffs has

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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.

27. 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

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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.

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

ISSUE NO.6

Whether the alleged deed of Will dated 10.01.1953 was executed by Jeebu Mandal?

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ISSUE NO.7

Whether the alleged deed of Will dated 10.01.1953 said to be executed by Jeebu Mandal is legal, genuine and last testament of the Executor and whether the same was executed by him consciously and in sound health and mind?

29. Plaintiffs have placed on record certified copy of the alleged Will. Will is stated to be registered but nobody was called from the Registrar Office to prove its Book Number and Volume Number. Plaint does not

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mention these numbers and even the witnesses of the plaintiffs have not stated the same. Plaintiffs claim that the subject Will is dated 10.1.1953 whereas Ext. D4/A which is an order of Collector, Khagaria dated 2.7.2013 and mentions Will deed No.17281 dated 17.1.1953. In the certified copy of Will (Ext.1) Book No. III, Volume No. I page Nos. 59 to 61 have been written but the registration number has been blackened after number '1'.

30. Plaint mentions that the original Will has been lost. They have not placed on record the photocopy of the alleged Will and from the certified copy signature of testator and attesting witnesses cannot be scrutinized as they are not available there. Admittedly, the attesting witnesses and deed writer of the subject Will have expired. Plaintiffs witnesses PW-1/plaintiff No.2, PW-2/plaintiff No.4, PW-3/plaintiff No.4, PW-4 & PW-5 have not seen the execution of Will and even they have not stated that they have seen the testator and the attesting witnesses or deed writer signing anytime. As the original Will is not on record, therefore, comparison of their signatures with any other document is also not possible. None of plaintiffs witnesses were even present at the time of execution or registration of the alleged Will.
31. Now we will see the law relating, how a Will can be proved. 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

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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."

32. Provision 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.
33. 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 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;

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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.

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

35. 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.

36. As attesting witnesses Baldeo Lal and Baleshwar Prasad as well as the Deed writer Bhuneshwar Prasad have already expired, then Section 69 of the Indian Evidence Act comes into picture. 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.
37. Plaintiffs did not try to prove the signature of the attesting witness by calling handwriting experts. Signature can also be proved by oral evidence but none of the plaintiffs witnesses has stated that he had seen the attesting witnesses signing or writing anywhere.
38. Manik Mandal was not related to Jeebu Mandal. Plaintiffs claim that mother of Manik Mandal was widow and Jeebu Mandal was widower and they had married and Jeebu Mandal had adopted Manik Mandal. There is no evidence of marriage and adoption. PW-4 who is villager of the testator has deposed that Jeebu Mandal had three daughters. It has not come in evidence that why did Jeebu Mandal executed the Will to person other than his blood line.
39. In view of above discussion, this Court arrives at conclusion that no Will dated 10.01.1953 was executed by Jeebu Mandal in favour of Manik Mandal. Thus, issue of valid and genuine Will does not arise.



ISSUE NO.7

Whether the case is hit by non-joinder of necessary parties?

40. Plaintiffs claim that Jeebu Mandal had no son but two daughters- Domani Devi and Radha Devi and Domani Devi was married with Sarjug Mandal. PW-1 has stated that Sarjug Mandal had two daughters and one has died and other Chanki Devi is alive. In the present case Chanki Devi has not been arrayed as a party. PW-2 has also stated that Domani Devi w/o Sarjug Mandal had two sons and one daughter. Plaintiffs have not made her daughter as party to the suit. Anand Mandal/defendant No.4 is son of daughter of Jeebu Mandal. PW-2 has stated that Anand Mandal had two brothers and two sisters. PW-3 has also stated that Anand Mandal had four sisters. Plaintiffs have not arrayed sisters of defendant No.4 in the suit. PW-4 has also stated that Jeebu Mandal had three daughters. Plaintiff does not mention about third daughter.
41. Thus, issue Nos. 1, 5, 6 and 7 are core issues and are decided against the plaintiffs.

ORDER

42. In view of above discussion present Suit i.e. T.S. 01/2023 arising out of Probate Case No.2/2011 is **dismissed** on contest.

Decree be prepared.

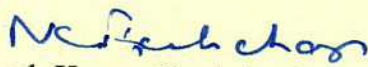
Pronounced in the Open Court. File be consigned to the record room.

Dictated and corrected by me


(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.

Dated: 23.03.2026

Dictated


(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.

Dated: 23.03.2026