

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GIRIDIH
ORIGINAL SUIT NO. 08 of 2017

CNR-JHGR01-001238-2017

Present : Veena Misra
 PR. DISTRICT JUDGE,
 GIRIDIH

Giridih, dated the 4th day of January, 2024

1. Santosh Kumar s/o Late Sadanand Prasad

2. Anuj Kumar s/o Late Sadanand Prasad

Both by faith Hindu, by occupation – Service, resident of village – Lataki, P. O. Lataki, within P. S. Jamua, District – Giridih. A/P petitioner no.1 resident of Argaghat, New Durga Mandap, Giridih, within P. S. Giridih (T), District- Giridih. Petitioner no.2 resident of New Barganad, New Colony, within P. S. Giridih (T), District – Giridih.

.....Petitioners/applicants.

Versus

1(a) Renu Prasad w/o Late Krishna Ballav Prasad

1(b) Sandeep Prasad s/o Late Krishna Ballav Prasad

1(c) Ashish Prasad s/o Late Krishna Ballav Prasad

1(d) Jyoti Prasad d/o Late Krishna Ballav Prasad

O. P. Nos.1(a) to 1(d) are resident of village – Lataki, within P. S. Jamua, District – Giridih.

2. Kusum Lata Prasad d/o Late Sadanand Prasad w/o Late Kalyaneshwari

Prasad. resident of village –Bishwasdih, P. O. Gadi Srirampur, within P. S. Giridih (M), District – Giridih. A/P C/o Chitranjan Prasad, 2 C, Sector- VII, Bhilai, District – Durg, Chhatisgarh – 490006.

3. Kiran Mala Sinha d/o Late Sadanand Prasad w/o Upendra Prasad

resident of village – Dhuraita, P. O. Dhuraita, within P. S. Hirodih, District – Giridih.

4. The Deputy Commissioner, P. S. & District – Giridih.

.....Opposite Parties.

Learned counsel for the petitioners : Sri Mandeep Kumar, Adv.

Learned counsel for O. Ps. : Sri Nirmal Kumar, Adv.

Learned counsel for O. P. No.4 : Sri Deepak Kr. Rai, A. G. P.

J U G M E N T

1. The present Original Suit has been filed on behalf of petitioners namely Santosh Kumar and Anuj Kumar i. e. for grant of Probate in respect to the landed property under the “Will” dated 22/05/2009 executed by Mostt. Jagdamba Devi during her life-time in favour of her sons i. e. petitioners as described in Schedule of the petition.

2. It has been alleged that Sadanand Prasad was the common ancestor of the parties in the case, who used to live alongwith his family members in his own house situated at Bhandaridih, within P. S. Giridih (T), District – Giridih. It is further alleged that Smt. Jagdamba Devi acquired several lands at village- Lataki, Ghaskaridih in Giridih vide

different Registered Sale Deeds and she came in possession over the same as absolute owner. Further she got her name mutated and paying rent and obtaining rent receipt for the same in her favour. The aforesaid Jagdamba Devi during her life time herself sold her certain lands out her purchased land. Her father Narayan Prasad died leaving behind two daughters namely Jagdamba Devi and Malti Devi. After the death of said Narayan Prasad, his property devolved upon aforesaid two daughters and they amicably partitioned between Jagdamba Devi and her sister Malti Devi and they came in possession over their respective shares to the exclusion of each other. Further Sadanand Prasad died on 25/07/1996, leaving behind his widow Jagdamba Devi, three sons namely Krishna Ballave Prasad, Santosh Kumar and Anuj Kumar as well as two daughters namely Kusum Lata Prasad and Kiran Mala Sinha. After the death of aforesaid Sadanand Prasad, his ancestral property devolved upon his widow, three sons and two daughters named above, each having 1/6th share. It is further alleged that before the death of Sadanand Prasad, his elder son Krishna Ballabh Prasad (O. P. No.1) residing in Kolkata who never care of his parents. Further her two daughters namely Kusum Lata Prasad and Kiran Mala Sinha are residing at their Sasural, left to have any concern with their parents. After the death of Sadanand Prasad, his widow Jagdamba started living with Santosh Kumar (Petitioner No.1) and Anuj Kumar (petitioner no.2), who used to look after their mother and gave all possible service. As such, Jagdamba Devi voluntarily executed a 'Will' dated 22/05/2009 in favour of the petitioners bequeathing her all acquired properties by Registered Sale Deed and properties inherited by her, on death of Sadanand Prasad and properties inherited by, on death of her parents and kept the 'Will' secret from the knowledge of family members and the said 'Will' was kept in her box. It is further alleged that on 01/04/2017, the petitioners with a view to get repairing and white wash of their house situated at Bhandaridih, opened rooms of the house including the room in which their mother used to live. They found iron suitcase of their mother lying in the room and the petitioners opened the same and found certain old papers kept in the Suitcase. Thereafter, in course of search, they found the 'Will' dated 22/05/2009 executed by Jagdamba Devi in their favour. As such, the petitioners came to know about the aforesaid 'Will' for the first time on 01/04/2017. It is further submitted that their mother Jagdamba Devi, being pleased with the service of the petitioners, executed a 'Will' dated 22/05/2009 in their favour assigning and bequeathing her acquired property (except land which were sold by herself), besides her 1/6th share acquired by her in ancestral land inherited after the death of her husband. The lands which she inherited from her parents, fully described in Schedule as given below. Further the said 'Will' was drafted by Sri Rajesh Kumar Sinha, Adv. The said 'Will' was executed by Jagdamba Devi in favour of the petitioners without any coercion or undue pressure. The property of the 'Will' described under Schedule of the petition valued at Rs.80,00,000/- for that maximum stamp duty of Rs.30,000/-, is being paid. There is no impediment u/s 370 of Indian Succession Act for

granting Probate Certificate. So, prayer has been made that Probate Certificate may be granted in favour of aforesaid petitioners in respect of lands described in Schedule of the petition.

3. From perusal of the record it appears that the stamp duty payable i. e. Rs.30,000/- has been paid vide Challan No.31 dated 09/05/2017, consequently it is sufficient as per the office report i. e. the Sheristadar.

4. The written statement/rejoinder has been filed on behalf of opposite party Nos. 1 to 3 stating therein that the petition for grant of Probate Certificate has not been filed according to Section 276 of Indian Succession Act. It is alleged that all the statements made in the said petition, are false, incorrect, concocted and to suit the malice intention of applicants, which make the 'Will' a suspicious document and the same cannot be relied upon. Further the alleged 'Will' which is the basis of the present case, is forged, fabricated and manufactured document. It was never executed by Jagdamba Devi and her signature does not find place on the said 'Will' and in fact, the said Jagdamba Devi never put her signature on the 'Will'. It is further stated that the statements made in paras **1 & 2** of the petition, are admitted with this correction that Sadanand Prasad (now dead), was the Karta of the joint Mitakshra Hindu Family, who was a C. C. L. employee whereas his wife Jagdamba Devi (now dead), was a house-wife having no source of income. From his own earning, the said Sadanand Prasad acquired several kotas of land at village – Latki, Ghaskaridih, Bhandaridih etc. i. e. either in his own name or in the name of his wife Jagdamba Devi which came in possession of entire joint-family property and in accordance with law, name of Jagdamba Devi was mutated. Further it is incorrect to say that the said Jagdamba Devi acquired land in village and Giridih and petitioners are called upon to prove the same. At the time of death of Jagdamba Devi, the petitioners dishonestly took all sale deeds in their custody and are in possession of the same i. e. all documents relating to the land in the name of Sadanand Prasad and Jagdamba Devi, are in custody of fraudulent and cunning petitioners. It is further stated that the statement made in **para 3** of the application, are correct with this modification that the land was sold with the consent of her husband or sons. Further the statement made in **para 4** of the application, are true and correct which are admitted with this modification that after death of Narayan Prasad, father of Jagdamba Devi, Jagdamba Devi and her sister Malti Devi had partitioned the property on the basis of written Sada & unregistered partition deed duly signed by both sisters. Further the contents of **para 5** of the application, are true upto the extent that Sadanand Prasad died leaving his widow, 3 sons and 2 daughters but it is totally incorrect to state that 1/6th share of property devolved upon each legal heirs. At the time of death of Sadanand Prasad, all the ancestral property was in joint-possession of joint-family members and after the death of said Sadanand Prasad, the ancestral property came in joint-possession of all surviving heirs and successors. It is further stated that first two lines of **para 6** of the said application, are

correct and rest statements are cock and bull story, far from truth and hereby denied. Further statements of **para 7** of the application, are outcome of shrewd and litigant petitioners who are men of purse. Santosh Kumar is a C. C. L. employee, who also kept all amount of father Sadanand Prasad after his retirement saying that from that money, he will modify the old building situated in village- Bhandaridih within Giridih Municipal Area. But he dishonestly spent nothing and the old house is in dilapidated condition and was/is in occupation of different tenants Bipin Prasad, Prabhat Kumar Sinha and others. During life-time, the said Sadanand Prasad with Jagdamba Devi removed their all belongings from Bhandaridih house and sifted their residence at Shastri Nagar, Giridih. It is further stated that after the death of Sadanand Prasad, Jagdamba Devi firstly for sometime resided with O. P. No.1 and thereafter started to reside in the house of O. P. No.3 at her Sasural situated in village- Dhuraita, P. S. Jamua. Thereafter, she used to reside at Shastri Nagar, Giridih and after that used to reside with her younger daughter and also with petitioners. O. P. No.1 and his wife several times asked Jagdamba Devi to reside at their residence at Kolkata but she refused to go with O. P. No.1 saying that she is getting sufficient pension amount to maintain herself at Giridih. She spent her life-time at Giridih where she has two residential houses. Hence, she did not leave Giridih and took her last breath at Giridih. Due to their Greed, petitioners also advised Jagdamba Devi to reside at her Shastri Nagar, Giridih residence because petitioners used to realize rent of Bhandaridih's house from the tenants. It is alleged that the petitioners had obtained signature of Jagdamba Devi on several blank papers as well as on withdrawal forms and chques with intent to withdraw the pension amount of Jagdamba Devi. In fact, Jagdamba Devi has not executed any 'Will' on 22/05/2009 in favour of petitioners. So, alleged 'Will' is a fraudulent and manufactured paper to suit the purpose of petitioners. It is totally false to say that Jagdamba Devi kept the 'Will' dated 22/05/2009 with a view to secret from family members in her box. As a matter of fact, during lifetime, the said Sadanand Prasad with his family members, permanently vacated his house situated at Bhandaridih and removed his all belongings from Bhandaridih to Shastri Nagar, Giridih residence and started to reside there alongwith his wife and petitioners and nothing remained in Bhandaridih house which was let out to different tenants and is still in possession of tenants. Further the tenants with their own fund, used to repair and white wash the house. As such, there was no need and occasion to get minor repair and white wash of house situated at Bhandaridih and no iron suit case containing the alleged 'Will' dated 22/05/2009 was found there on 01/04/2017. Further the statements in **para 8** of the petition are equally false and incorrect which has been fraudulently manufactured after institution of Partition Suit No.58/2017 dated 08/02/2017 in the court of Civil Judge (S. D.)- I, Giridih by O. P. Nos.1 to 3 against the petitioners for partition of all land acquired by their father in his own name or in the name of their mother Jagdamba Devi as well as of their ancestral land i. e. for partition of the land which are subject matter

of this Probate Case. The entire land acquired in the name of said Jagdamba Devi, are joint-land of petitioners as well as of O. P. Nos.1 to 3 in which each legal heirs of Jagdamba Devi are entitled to get 1/5th share after its partition by metes and bounds for which Partition Suit No.58/2017 is pending in a court of law having jurisdiction.

It is further contended on behalf of O. P. Nos.1 to 3 that the description of land is not mentioned in the alleged 'Will' and the WILL for 1/6th share of joint Hindu Mitakshra Family Property, is itself an illegal document. It is further alleged that the petitioners, relative and friends in collusion with each other, have manufactured the alleged 'Will' dated 22/05/2009 to grab the entire joint-family in which O. P. Nos.1 to 3 have definite share. Further the alleged 'Will' is not scribed in accordance with law. Further it appears that the 'Will' is not attested by any of attesting witness in accordance with law. It is further alleged that when Jaamba Devi was at Giridih, the petitioners used to visit at the residence of Jagdamba Devi and used to take signature of Jagdamba Devi on plain paper to withdraw the amount from Bank and also for drafting petitions. As such, the said plain (Sada) papers with signature of Jagdamba Devi might have been converted into WILL by the petitioners with the help of their relative and friends, after institution of Partition Suit No.58/2017. Therefore, the alleged 'Will' is bad in law, not reliable document and accordingly, the petitioners are not entitled to get Probate Certificate. So, prayer has been made to reject the petition for the grant of Probate Certificate.

From perusal of the order-sheet dated 29/05/2018, it transpires that O. P. No.4 appeared and several dates were fixed for filing of Rejoinder/show cause on behalf of O. P. No.4 but the same has not been filed in spite of awarding sufficient opportunity. Hence, Ex-parte proceeding has been ordered against O. P. No.4. .

5. On the basis of pleadings of the parties, the following issues have been framed for adjudication of the Suit :-

- (1) Whether the instant Original Suit, in the present form, as filed on behalf of present petitioners, is maintainable ?
- (2) Whether the valid cause of action filing of the instant Original Suit, accrued in favour of the petitioners ?
- (3) Whether the instant Probate Case/Original Suit as filed u/s 276 of Succession Act, on behalf of present petitioners for grant of Probate, is accordance with law ? And whether "Will" dated 22/05/2009 executed by Jagdamba Devi, is valid, genuine and legal document or forged, fabricated and manufactured document ?
- (4) Whether the "Will" dated 22/05/2009 was voluntarily executed by the said Jagdamba Devi and signed it as per her free will and consent ?
- (5) Whether Jagdamba Devi has acquired the land in question (as included in the "Will" dated 22/05/2009), from her own fund/earnings ?
- (6) Whether present petitioners Santosh Kumar and Anuj Kumar, had taken care of

Jagdamba Devi in her old age and provided medicine and other related service and nursing to her ?

(7) Whether the present petitioners Santosh Kumar and Anuj Kumar, are entitled to grant of Probate Certificate in their favour in respect to the property under the “Will” dated 22/05/2009, executed by Jagdamba Devi in her lifetime ?

(8) What other relief/relieves, petitioners are entitled to receive ?

6. In order to substantiate its case, the petitioners have examined altogether four witnesses, which are as follows :-

PW 1 Sheikh Allauddin

PW 2 Mihir Kumar

PW 3 Rajesh Kumar Sinha and

PW 4 Santosh Kumar (petitioner no.1)

Apart from oral evidence, on behalf of the petitioners, the following documents have been exhibited :-

Ext -1 :- Signature of witness Sheikh Allauddin (PW 1) on the “Will” dated 22/05/2009.

Ext -1/1 :- Signature of witness Mihir Kumar (PW 2) on the aforesaid “Will”

Ext -1/2 :- Signature of Testator Jagdamba Devi on the “Will” dated 22/05/2009.

Ext -1/3 :- Signature of the “Will” writer namely Rajesh Kumar Sinha (PW 3).

Ext -2 :- The Original “Will” dated 22/05/2009.

Ext -3 :- The Death Certificate of Testator Jagdamba Devi.

Ext – 4 to 4/4 :- The Original Sale Deeds

Ext – 5 to 5/4 :- The C C of Sale Deeds.

From perusal of the order-sheet dated 14/07/2023, it transpires that even ample opportunity were given to the defendants/O. Ps. to adduce evidence in support of its case and on 23/06/2023, last chance was given to the defendants for adducing evidence on their behalf but they failed to do so. Hence, the defendants’ evidence was closed vide order dated 14/07/2023 and the case was fixed for argument.

7. The original Challan No.31 dated 09/05/2017 for deposit of Rs. 30,000/- in respect of payment of court fee, has also been filed and brought on record.

8. The court has to adjudicate that whether the alleged “Will” dated 22/05/2009 executed by Testator Jagdamba Devi in favour of the petitioners in respect to the lands described in Schedule of the Probate Petition, is accordance with law ?

FINDINGS

9. The main objection has been raised against the adjudication of **Issue No. 3, Issue No.4, Issue No.5 & Issue No.7**, hence, the aforesaid issues are taken up first.

Issue No. 3 :- Whether the instant Probate Case/Original Suit as filed u/s 276 of Succession Act, on behalf of present petitioners for grant of Probate, is accordance

with law ? And whether “Will” dated 22/05/2009 executed by Jagdamba Devi, is valid, genuine and legal document or forged, fabricated and manufactured document ?

&

Issue No. 4 :-Whether the “Will” dated 22/05/2009 was voluntarily executed by the said Jagdamba Devi and signed it as per her free will and consent ?

&

Issue No. 5 :- Whether Jagdamba Devi has acquired the land in question (as included in the “Will” dated 22/05/2009), from her own fund/earnings ?

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Issue No. 7 :- Whether the present petitioners Santosh Kumar and Anuj Kumar, are entitled to grant of Probate Certificate in their favour in respect to the property under the ‘Will’ dated 22/05/2009, executed by Jagdamba Devi in her lifetime ?

10. Onus to prove the aforesaid issues are on the petitioners and during trial, the petitioners have been able to produce and examine altogether four PWs in support of its case. **PW 4 Santosh Kumar** who is the petitioner no.1 in the instant Original Suit. He has stated that the name of his mother was Jagdamba Devi who acquired different kittas of lands at Mouza – Lataki, Ghaskaridih and Giridih through Kewala and came in possession over the same. He has further stated that during her lifetime, his mother sold some part of lands through Registered Sale Deed and gave possession to the purchasers over the same. In para 3, PW 4 further states that the name of his ‘Nana’ was Narayan Prasad who had only two daughters namely his mother Jagdamba Devi and his ‘Maushi’ namely Malti Devi. Her mother being elder daughter of his Nana, she looked after him as well as kept accounts of the income incurred from agriculture. After the death of his ‘Nana’, his all properties were partitioned between his mother and ‘Maushi’ and came in possession over their respective share. He has further stated that his elder brother Krishna Ballav Prasad used to live in Kolkata since before the death of his father whereas his two sisters used to live at their Sasural. They never looked after his mother but they always called his elder brother and sisters whenever the treatment of his mother was done at his own cost. Further his elder brother used to take all the medical papers as he used to get all the medical expenses from the Government. He and his brother i. e. petitioner no.2 always looked after their mother and fulfilled her all requirements during her lifetime. PW 4 further states that his mother died on 12/12/2012 at his residence situated at Argaghat. It is further stated that on 01/04/2017, his brother Anuj Kumar was repairing and white washing in his old house situated at Bhandaridih and at the same time, an iron box found from the room of his

mother. Thereafter, the lock of the said box, was broken in which the documents relating to her acquired landed property as well as the alleged 'Will' dated 22/05/2009 were found kept in the said box by his mother. They got knowledge about the said 'Will' on that very date. He has further stated that after perusing the said 'Will', he came to know that on dated 22/05/2009, the 'Will' in respect to purchased land by his mother as well as 1/6th share of ancestral land i. e. the landed property mentioned in Schedule of the petition, which was prepared and drafted by Advocate Rajesh Kumar Sinha at the instruction of his mother. In the said 'Will', his mother and Adv. Rajesh Kumar Sinha as well as two witnesses namely Sheikh Allauddin and Mihir Kumar put their signature. Thereafter, both brothers inquired from the aforesaid Advocate and witnesses about the said 'Will' who confirmed about the same. It is further stated that their mother Jagdamba Devi, being pleased with the service of the petitioners, executed a 'Will' dated 22/05/2009 in their favour assigning and bequeathing her acquired property (except land which were sold by herself), besides her 1/6th share acquired by her in ancestral land inherited after the death of her husband. The lands which she inherited from her parents, fully described in Schedule as given below. Further the said 'Will' was drafted by Sri Rajesh Kumar Sinha, Adv. The said 'Will' was executed by Jagdamba Devi in favour of the petitioners without any coercion or undue pressure. On the basis of aforesaid 'Will', he is entitled to grant Probate Certificate in respect to the disputed land.

Further PW 4 has proved the Death Certificate of deceased Jagdamba Devi as **Ext-3** with objection. He has further proved the original Sale Deed No.8746 dated 23/09/1953 in the name of Jagdamba Devi as **Ext-4** with objection. He has further proved the original sale deed no.3664 dated 23/04/1952, sale deed no.1871 dated 26/10/1978, sale deed no.6131 dated 08/06/2002 as well as sale deed no.6682 dated 23/06/1994 which have been marked as **Ext – 4/1**, **Ext- 4/2**, **Ext – 4/3** & **Ext – 4/4** respectively with objection. Further PW 4 has proved the Certified Copy of sale deeds in the name of Jagdamba Devi i. e. Sale Deed No.6756 dated 09/06/1960, sale deed no.9808 dated 16/07/1962, sale deed no.12359 dated 01/07/1967, sale deed no.7671 dated 17/03/1972 as well as sale deed no.11479 dated 08/10/1975 which have been marked as **Ext-5**, **Ext – 5/1**, **Ext-5/2**, **Ext-5/3** & **Ext-5/4** respectively with objection.

On repeated call, none appeared on behalf of the opposite parties to cross-examine this witness. Hence, PW 4 was discharged.

PW 1 Sheikh Allauddin has stated in his evidence that the house of Late Jagdamba Devi w/o Late Sadanand Prasad is situated at Mauja – Bhandaridih and his house is also situated adjacent to her house. He always used to go to her house. He further states that Sadanand Prasad died in the year, 1996 and his wife Jagdamba Devi (since dead) called him at her house on 22/05/2009 in the evening and at that time Rajesh Kumar Sinha, Advocate and Mihir Kumar, Advocate were also present there. Thereafter, Jagdamba Devi

handed over some original documents of sale deeds to Rajesh Kumar Sinha, Adv. and stated that these are her self purchased property and his elder brother and daughters did not look after her but her sons Santosh Kumar and Anul Kumar used to look after her. So, she wanted to execute 'Will' regarding her landed property in favour of aforesaid both the sons. PW 1 further states that Rajesh Kumar Sinha, Adv. Prepared and drafted the said 'Will' as per instruction of said Jagdamba Devi and after that contents of the 'Will' was read over to her and finding it true, she put her signature over the same in his presence. Further he himself as well as Rajesh Kumar Sinha, Adv. And Mihir Kumar, Adv. also put their signature on the said 'Will'. He has further proved his signature on the 'Will' dated 22/05/2009 and the same is marked as **Ext-1**.

In the cross-examination, PW 1 states that the husband of Jagdamba Devi namely Ramanand Prasad was a lawyer who purchased a house at Shastrinagar, Giridih. Thereafter, the said Sadanand Prasad alongwith his wife used to reside in the house situated at Shastrinagar, Giridih. He has admitted the fact that during her lifetime Jagdamba Devi had never suffered from any ailment. He further admitted that he always remained contact with Anuj Kumar (petitioner no.2). Further PW 1 states that Anuj Kumar never told him that when his elder brother posted in Patna or Kolkata, his mother was treated there. He has further stated that Jagdamba Devi died on 12/12/2012 but he has failed to state about the date of his parents. Further he states that Jagdamba Devi died leaving behind her three sons and two daughters. PW 1 further states that Jagdamba Devi herself called him for preparation of said 'Will' and she had given the documents from her box. He further states that at the time of drafting and preparing of the 'Will', one another advocate was also present there but he does not know his name. From perusal of the evidence of PW 1, it transpires that he has made contradictory statement during course of his evidence.

PW 2 Mihir Kumar and **PW 3 Rajesh Kumar Sinha** who are lawyers. PW 2 has identified his signature on the 'Will' dated 22/05/2009 which has been proved and marked as **Ext-1/1**. Further PW 3 has proved the signature of Testator Jagdamba Devi as well as his signature on the 'Will' dated 22/05/2009 which have been marked as **Ext-1/2** & **Ext-1/3** respectively. PW 3 further proved the original 'Will' dated 22/05/2009 which has been marked as **Ext-2**.

In the cross-examination, PW 2 has stated that the petitioner Santosh Kumar is his brother-in-law. Krishnballav Prasad is own brother of Santosh Kumar and Jagdamba Devi died on 12th of December, 2012 and she died due to old age. Jagdamba Devi did not suffer from any disease and she was not treated by any Doctor. Further PW 2 has admitted that he does not know which document was perused at the time of preparation of alleged 'Will'. He further admits that he does not know as to whether Rajesh Kumar Sinha used to do work as Deed Writer. PW 2 further states that Jagdamba Devi had 03 sons and 03 daughters out of which one daughter already died before preparation of alleged 'Will'.

PW 3 has stated that he also used to prepare Deed and Kewala but he has failed to state about writing of Kewala in favour of any party. Further he has admitted the fact that he was called by said Jagdamba Devi through land line number but he has failed to state about the land line number by which he was called by Jagdamba Devi. He has further stated that he does not know the source of income of Jagdamba Devi. He has further stated that he advised Jagdamba Devi that the alleged 'Will' would be registered on Stamp paper but she did not do so. PW 3 has further stated that he does not know for which land, Krishnaballav Prasad filed partition suit in the court.

11. From perusal of the oral as well as documentary evidence, it transpires that the petitioner (PW 4) has alleged that the 'Will' dated 22/05/2009 i. e. Ext-2 is executed by his mother Jagdamba Devi in respect of the lands mentioned in Schedule of the Probate petition in favour of her two sons namely Santosh Kumar (petitioner no.1) and Anuj Kumar (petitioner no.2). It is further alleged that after the death of their father, the aforesaid petitioners looked after their mother Jagdamba Devi and extended all kinds of service to her during her lifetime. Further the elder son of Jagdamba Devi namely Krishnaballav Prasad was residing in Kolkata and he never took care of his parents whereas their daughters namely Kusum Lata Devi (O. P. No.2) and Kiran Mala Sinha (O. P. No.3) are residing at their Sasural and left to have any concern with their parents. The Testator Jagdamba Devi was pleased with the service of the petitioners, voluntarily executed the alleged 'Will' dated 22/05/2009 in their favour bequeathing her all acquired properties by Registered sale deed as well as properties inherited by her, after the death of her husband Sadanand Prasad and properties inherited by her, after the death of her parents. The alleged 'Will' was kept secret by Jagdamba Devi in her box from the knowledge of family members. It has come in the evidence of PW 4 that on 01/04/2017, his brother Anuj Kumar was repairing and white washing in his old house situated at Bhandaridih and at the same time, an iron box found from the room of his mother. Thereafter, the lock of the said box, was broken in which the documents relating to her acquired landed property as well as the alleged 'Will' dated 22/05/2009 were found kept in the said box by his mother. They got knowledge about the said 'Will' on that very date.

On the other hand, the opposite parties in their Rejoinder it is alleged that the description of land is not mentioned in the alleged 'Will' and the WILL for 1/6th share of joint Hindu Mitakshra Family Property, is itself an illegal document. The petitioners, relative and friends in collusion with each other, have manufactured the alleged 'Will' dated 22/05/2009 to grab the entire joint-family in which O. P. Nos.1 to 3 have definite share. Further the alleged 'Will' is not scribed in accordance with law. Further it appears that the 'Will' is not attested by any of

attesting witness in accordance with law. When Jaamba Devi was at Giridih, the petitioners used to visit at the residence of Jagdamba Devi and used to take signature of Jagdamba Devi on plain paper to withdraw the amount from Bank and also for drafting petitions. As such, the said plain (Sada) papers with signature of Jagdamba Devi have been converted into WILL by the petitioners with the help of their relative and friends, after institution of Partition Suit No.58/2017. Therefore, the alleged 'Will' is bad in law, not reliable document and accordingly, the petitioners are not entitled to get Probate Certificate.

From perusal of **Ext-2** i. e. 'Will' dated 22/05/2009, it transpires that the Testator Jagdamba Devi had alleged to have executed the aforesaid 'Will' in respect of the land inherited by her, after the death of her husband as well as after the death of her father. The said Jagdamba Devi executed the alleged 'Will' in favour of her only two sons namely Santosh Kumar and Anuj Kumar out of her total three sons and two daughters. But in fact, the remaining son and daughters are also her legal heirs. Further from perusal of the evidence and other materials available on the record, it transpires that there was no source of income of the said Testator Jagdamba Devi to acquire self property by purchasing the land in question from her own earning.

It is well settled law that *the properties which are self acquired can be bequeathed by 'Will' by owner to anyone even other than his heirs or legal representatives or relatives. But if the properties are inherited, the same cannot be given away by 'Will', but will devolve upon the heirs entitled to such person under the Hindu Law, if the deceased is Hindu.*

The burden of proof lay upon the petitioners to prove that the landed property was self acquired by Testator Late Jagdamba Devi. There is nothing on record to show that the property has been self acquired by the Testator of the 'Will' in question. In fact, the Testator of the Will is a house-wife with no earning. Although she has been stated to acquire some landed property through inheritance, but such property cannot be subject matter of alleged 'Will'.

As per Hindu Law, *the person who inherits the property from his ancestors cannot give away the property to someone else by making a 'Will' as the next generations have equal rights on that property.* If an individual wants to make a 'Will' for self acquired property, that is completely legal.

But here in the instant case, it is alleged that the Testator Jagdamba Devi executed the 'Will' dated 22/05/2009 in respect of the land inherited by her,

after the death of her husband as well as after the death of her father. The aforesaid 'Will' was executed in favour of her only two sons namely Santosh Kumar and Anuj Kumar, who are the petitioners of the instant Original Suit. In the instant suit, the opposite parties are also the legal heirs of deceased Sadanand Prasad. But the Testator Jagdamba Devi, who was the widow of the deceased Sadanand Prasad, inherited the property from her ancestors. In spite of the fact, she executed the 'Will' dated 22/05/2009 in favour of the petitioners while the opposite party members have also equal rights on that property as per Hindu Law.

12. In the aforesaid facts and circumstances as well as discussions as made above, Issue Nos.3, 4 5 & 7 are hereby decided against the petitioners. As such, the suit as filed on behalf of the present petitioners, is not maintainable and there is no valid cause of action for filing of the instant suit. Since the main issues are decided against the petitioners, hence, the present petitioners are not entitled to grant of Probate Certificate in respect to the property under the 'Will' dated 22/05/2009. Therefore, the instant Original Suit is hereby **dismissed** and disposed of accordingly.

(Dictated)

--Sd. V. Misra--

PR. DISTRICT JUDGE,

GIRIDIH,

Dated, 04/01/2024