

In the Court of Additional Sessions Judge-II,
Nalanda at Biharsharif

Present : **Upendra Kumar,**
Additional Sessions Judge-II
Nalanda at Bihar sharif.

PROBATE CASE NO-17/2018

Rohan kumar..... petitioner.

V/S

Estate of Late Gangajali Devi..... O.P.

ORDER

17.02.2020

Heard both sides on intervenor petition dated 09.12.19 filed on behalf of Rampyare Prasad, Anuj kumar, Balam Prasad and Manoj kumar and considered the rejoinder dated 03.01.2020 filed on behalf of the applicant.

It has been submitted on behalf of intervenor that on 13.11.19 their uncle Ramchandra Das@ Ramchandra Prasad Yadav passed away leaving behind ancestral land purchased by him. He was peon in agricultural department posted at Gopalganj. He joined the service in 1971 and retired on 23.12.08. He was karta of his family having no issues from his wife Gangajali Devi, he had purchased land in her name through sale deed dated 18.06.93, 26.12.2000 and 01.11.08 situated at mauza-Tetariya, Kajichak and Amnawa Tola Musharhi respectively by means of his personal income only to keep her happy. Gangajali Devi was an illiterate lady and was suffering from paralysis since 8 years prior to her death and was not in a physical and mental condition to execute any deed of will, which have been prayed to be probated. Applicant made Ramchandra Prasad as O.P. but intentionally did not implead the petitioners who are necessary party at

least after death of Ramchandra Prasad, moreover Ramchandra Prasad has opposed the claim of execution of any will by Gangajali Devi and W.S. filed by Ramchandra Prasad clearly shows that he and Rampyare prasad were full brothers and applicants are sole heirs of late Ramchandra Prasad. Further submission is that in getting will executed Gangajali Devi was replaced by some other women to prepare the forged will. Therefore, they should be allowed to contest the probate application in interest of justice.

On the contrary, it has been argued on behalf of applicant that Ramchandra Prasad was not joint with his brother and he had deserted Gangajali Devi, but said properties stand in the name of the Gangajali Devi which she has purchased from her personal fund collected through gifts obtained from her mayka time to time and it is wrong that Gangajali Devi was paralyzed 8 years before the execution of the said will. Applicants have no concern either with Gangajali Devi or Ramchandra Prasad and their properties. Now, opposite party late Ramchandra Prasad is no more and therefore, there is none to contest the claim of the applicant. Therefore, prayer of petitioners is liable to be dismissed.

On hearing parties it becomes clear that relationship of petitioner with Ramchandra Prasad has not been denied by the applicant and there is no reliable source of income of Gangajali Devi brought on record. By the applicant this fact that Ramchandra Yadav; the husband of Gangajali Devi was employed in irrigation department and superannuated in the year 2008 has also not been challenged by the applicant. Moreover, a perusal of W.S. filed by late Ramchandra prasad yadav clearly suggest that he and petitioners were residing in joint family having joint possession over ancestral and self acquired property. Late Ramchandra prasad has clearly stated in his W.S. that property were purchased in the name of Gangajali Devi by means of his personal fund only to appease late Gangajali Devi who was issueless. Therefore, in the circumstances mentioned above after death of Ramchandra yadav petitioners appears to be necessary opposite party to decide the genuineness of will said to be executed by late Gangajali Devi in favour of the applicant.

Accordingly, prayer of petitioner is allowed.

Put up on 04.03.2020 for further proceeding.

(Dictate and corrected by me)

(Upendra Kumar)

2nd Additional District & Sessions Judge

Nalanda at Bihar Sharif

Date: 17.02.2020.