

**In the Court of Additional District Judge 7<sup>th</sup>, Saran at Chapra.**  
**Probate 29/2003**  
**CIS No.-255/2014**

07.12.2022

**Shankar Prasad Gupta.....Applicant**

**V.**

**Sudha Kunwar & Ors.....O.Ps**

**ORDER**

The record is today put-up for order on petition dated 09.06.2022 filed on behalf of O.P, the rejoinder to which has been filed on 29.07.2012.

The Id. Counsel for the O.P has submitted that Most. Sudha Kunwar was the sole objector in this case and her legal heirs have been made party in this case. They appeared in this case on 24.05.2022 and have filed their objection. The applicant witness no. 5 Shiv Dayal Prasad was examined on 30.10.2021 but the cross examination could not be done as the OP where busy in Shradh Ceremony in their mother. In such view the Id. Counsel prayed to recall Shiv Dayal Prasad witness no. 5 for cross-examination by the OPs for ends of justice.

The Id. Counsel for the applicant has submitted vide rejoinder dated 29.07.2022 that the application dated 09.06.2022 filed by OPs is not maintainable. The OPs are not aware of the proceedings of this case. The witness Shiv Dayal Prasad has been cross examined by late Mustafa Khan the Id. Counsel for the OPs and as the Will was closed in the box it could not be marked as Exhibit. Therefore it is not justifiable to recall the witness. And therefore prayed to reject the petition dated 09.06.2022 with cost.

Heard both the parties.

On perusal of the case record it transpires that this Probate Case is of the year 2003 and is in the list of 15 old cases of the Hon'ble Court which are required to be disposed off within two months. The record is pending for evidence of O.Ps since 28.10.2021. The court further finds that applicant witness No. 5 Shiv Dayal Prasad appeared before this court and as no one appeared to cross-examine him he was discharged on 16.07.2019. He is the brother of deed writer Vishnu Dayal Sah and has stated to have worked with him as deed writer. The Will executed by Panpati Kunwar in favour of Shankar Prasad Gupta was

**In the Court of Additional District Judge 7<sup>th</sup>, Saran at Chapra.**

**Probate 29/2003**

**CIS No.-255/2014**

**07.12.2022**

drafted and prepared in his presence by his brother Vishnu Dayal Sah the deed writer who is now no more. The witness merely identified the deed of Will which was marked as Ext.-4. The present petition has been filed to recall the witness for cross-examination which the court does not find purposeful as the witness is neither the deed writer nor the witness nor identifier to the deed of Will and nothing can be drawn from his testimony by the OPs in his cross examination. The OPs shall not be prejudiced if the witness is not recalled for cross examination.

Therefore finding no merit and substance in the petition dated 09.06.2022 the same is rejected. The OPs are given one month time to conclude their evidence. No further adjournment shall be allowed in view of the direction of the Hon'ble Court.

Record to be fixed for evidence of O.P on 13.12.2022 which shall be taken up on day to day basis.

A.D.J. VII  
Saran  
07.12.2022