

In the Court of Additional District Judge 7th, Saran at Chapra.
Probate 08/2004
CIS No.-42/2015

20.12.2022

Motijhari Devi.....Applicant

V.

Lal Babu Singh & Ors.....O.Ps

ORDER

The record is put-up for order on petition dated 06.07.2019 and 01.08.2019 filed on behalf of the applicant, the rejoinder to which has been filed on 01.07.2019. There is another petition dated 22.09.2020 filed on behalf of the applicant, the copy of which has been received by the ld. counsel for the O.Ps but has not filed any objection/rejoinder, is also taken up for order.

The ld. counsel for the applicant vide petition dated 06.07.2019 has submitted that O.Ps have denied the Will dated 09.02.1994 executed by Ram Sagar Singh in favour of Motijhari Devi and have also denied the pen and signature of Ram Sagar Singh on the deed of Will. The O.Ps have filed on record the photo-copy of signature of Ram Sagar Singh in Partition Suit No.-58/1951 filed by Ram Sagar Singh which is in his pen and signature. It is necessary to compare the signature of Ram Sagar Singh on the Will dated 09.02.1994 and Partition Suit No.- 18/1951 for the ends of justice. Both the documents are available on record. The ld. counsel in such view prayed to get the signature compared by any handwriting expert. The ld. counsel vide petition dated 01.08.2019 prayed to call for record of Misc. Case No.- 21/2004 from the ld. Court of Sub-Judge I Saran in which the Partiton Suit No.-58/1951 is also attached so that the signature could be tallied.

The ld. counsel for the O.Ps vide rejoinder dated 01.07.2019 opposed the petition dated 06.07.2019 as being not maintainable on facts and on law both and is fit to be rejected. It is not possible to compare the signature in absence of original document and it is clear from petition dated 06.07.2019 that no such prayer has been made to call for the original record of Partition Suit No.- 58/2019 and the applicants wants to get the signature of Ram Sagar Singh compared with the certified copy which is against the mandate of law. In such view the ld. counsel prayed to reject the petition dated 06.07.2019.

Heard both the parties.

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On perusal of the case record it transpires that the applicant vide supplementary petition dated 01.08.2019 added the prayer to call for the record of Misc. Case No.-21/2004 from the Court of Sub-Judge I Saran in which there is attached the original case record of Partition Suit No.- 58 of 1951. The Court finds that once an objection has been raised over the genuineness of the Will and the signature of the testator, it is expedient to get it compared with other original signature of the same person if available. Therefore in order to arrive at a just adjudication of the matter in issue the petition filed by the applicant is required to be allowed. However the Court finds that this is a Probate Case of the year 2004 and is in the list of 15 old cases of the Hon'ble Court in which there is direction to dispose off the case within three months. Both the parties are apprised of this fact. The petition dated 06.07.2019 filed by the applicant is hereby allowed. Office to call for the case record of Misc .Case No.-21/2004 from the Id. Court of Sub-Judge Ist Saran alongwith Partiton Suit No.- 50 of 1951. The cost of comparing by the handwriting expert shall be borne out by the applicant.

Further taking up another petition dated 22.09.2020 filed on behalf of the applicant that the O.P Lal Babu Singh died on 20.05.2020 leaving behind his wife Shanti Devi, two sons Pramod Kumar Singh, Ranjit Kumar Singh, three daughters Renu Singh, Rashmi Kumari and Asha Kumari. It is necessary to delete name of O.P Lal Babu Singh from the Probate Petition and substitute his legal heris in his place. The Id. counsel has also filed a petition to condone the delay caused by Corona Pandemic. The copies were served upon the Id. counsel for the O.Ps and despite serveral opportunitis no rejoinder/objection has been filed.

The Court finds that the deletion and substitution of heris as necessary to finally adjudicate the Probate Case. Therefore the petition dated 22.09.2020 is allowed. Office is directed to make the deletion and substitution of legal heris of Lal Babu Singh in his palce within stipulated time. Applicant is given one month time to conclude the evidence. In view of the direction of the Hon'ble Court no further adjournment shall be allowed.

Next date is fixed on 23.12.2022.

A.D.J. VII
Saran
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