

**Balram Sahu and Ors. Vs. Rameshwar Sahu and Ors.**

**Balram Sahu and Ors. Vs. Rameshwar Sahu and Ors.**

**SooperKanoon Citation :** [sooperkanoon.com/76342](http://sooperkanoon.com/76342)

**Court :** Jharkhand

**Decided On :** Jul-22-2016

**Appellant :** Balram Sahu and Ors.

**Respondent :** Rameshwar Sahu and Ors.

**Judgement :**

1 M.A. No. 323 of 2006 IN THE HIGH COURT OF JHARKHAND AT RANCHI M.A. No. 323 of 2006 1. Balram Prasad Sahu; 2. Ashok Prasad Sahu; 3. Manoj Kumar Sahu; Appellants -V e r s u s - 1. Rameshwar Sahu; 2. Nageshwar Sahu; 3. Bhola Sahu; 4. Krishna Sahu; 5. Kishori Sahu; 6. Parmanand Sahu; 7. Smt. Shavitry Devi; 8. Smt. Sunita Devi .. ... Respondents CORAM: - HONBLE MR. JUSTICE D. N. UPADHYAY For the Appellants : Mr. H.C. Prasad, Advocate. For the Respondents:Mr. S.N. Das, Advocate. C.A.V. On 13.10.2015 PRONOUNCED ON2207/2016 D.N. Upadhyay, J.

The present appeal has been preferred against the Judgment dated 22.06.2006 passed by Additional Judicial Commissioner No. VI, Ranchi in connection with Probate Title Suit No. 05/2004 arising out of Probate Case No. 57/1997 whereby the Suit brought by the appellants for grant of Letter of Administration against a Will dated 09.11.1983 executed by Kamal Sahu, grand father of the appellants has been dismissed.

2. The case of the appellants in brief is that Kamal Sahu, son of Late Sita Sao, resident of village - Hesalong, P.S. Khelari, District - Ranchi, the grand father of

the appellants, executed his last Will dated 09.11.1983 and bequeath the Schedule property in favour of the appellants. Kamal Sahu died on 30.10.1993 leaving behind six (6) sons and two (2) married daughters who have been arrayed as opposite party nos. 1 to 8 in the Original Application. The wife of Kamal Sahu predeceased him on 15.12.1980. The Will executed by Kamal Sahu was attested by two (2) witnesses namely Ram Kumar Sahu and Heerakant Jha and scribe of the Will was Laxman Singh. The schedule properties mentioned in the Will for grant of Letter of Administration has been valued at Rs.45,000/-.

3. The opposite parties, after receipt of notice appeared before the learned Additional Judicial Commissioner. The opposite party no. 1 - Rameshwar Sahu and opposite parties no. 4 to 6 - Krishna Sahu, Kishori Sahu and Parmanand Sahu have filed their separate written statement. The opposite party no. 2 - Nageshwar Sahu, opposite party no. 7 - Smt. Shavitry Devi and opposite party no. 8 - Smt. Sunita Devi did not file their 2 M.A. No. 323 of 2006 written statement but supported the case of the appellants by filing petition through their lawyers. Since opposite parties no. 1 and 4 to 6 have raised objections against grant of Probate in favour of appellants, learned Trial Court referred the matter to Judicial Commissioner for registering Title Suit vide Order dated 14.01.2004. Accordingly, the application for grant of Probate filed by the appellants was converted into Title Suit No. 05/2004.

4. Learned Additional Judicial Commissioner, after securing attendance of the parties and completion of their pleadings, framed following issues:-

(1) Whether the probate case is maintainable?

(2) Whether Late Kamal Sahu executed a genuine and valid will as the last testament dt. 09.11.83 in favour of the plaintiffs?

(3) Whether the will as last testament of Late Kamal Sahu was executed voluntarily without coercion, fraud and undue influence?

(4) Whether the plaintiffs are entitled to the relief as claimed for?

5. The appellants examined altogether five

(5) witnesses and proved documents as per exhibits list in support of their claim and contention. On the other hand, the respondents / opposite parties had also examined witnesses to prove their averment in their pleadings. Opposite party nos. 1 and 2 had examined themselves as a witnesses whereas four witnesses have been examined on behalf of opposite party nos. 4, 5 and

6. Ram Kumar Sahu (A.W.-1) is an attesting witness to the Will executed by Kamal Sahu. He has stated that Kamal Sahu had executed his Will in favour of Balram Sahu, Ashok Sahu and Manoj Sahu (appellants) in presence of this witness and Heerakant Jha and the Will was written by Laxman Singh. The Testator had put his LTI on the said Will in presence of this witness and Heerakant Jha. He has proved this signature and the signature of Heerakant Jha appearing on the Will as Exhibits-1 and 1/1. He has further stated that the Will was written by Laxman Singh who also signed it and the Will has been proved and marked Exhibit-2. The property for which Will was executed has further been described by this witness. He has stated that the property against which Will was executed was the self acquired property of Kamal Sahu. At the time of execution of Will, the Testator was maintaining sound health. In para-5 he says that Kamal Sahu, 3 M.A. No. 323 of 2006 on being satisfied with the services being rendered to him by the appellants, had decided to execute a Will on 07.11.1983 and prepared the Will in his presence and in presence of Heera Kant Jha. After preparation of the Will, he found it correct and put his LTI. Heerakant Jha was the priest of Kamal Sahu who died 3 - 4 years ago. In his cross-examination, he says that Kamal Sahu died at the age of 90 years. The appellants are the sons of opposite party no. 2 - Nageshwar Prasad Sahu. He says that Balram is now aged about 35 years i.e. on the date of deposition of this witness. The remaining two appellants - Ashok Prasad Sahu and Manoj Sahu are aged about 30 - 32 years and 29 years respectively. He further says that the Testator had decided to execute a Will in favour of the appellants because he was satisfied with the services rendered by them. This witness has confirmed that the properties owned by the family was already partitioned between Kamal Sahu and his sons but he could not say the date on which the partition had taken place. He could not say whether Kamal Sahu had disclosed the appellants about the execution of said Will or not. Suggestions given to this witness have been denied. Shambhu Das (A.W.-2) happens to be a formal witness and he has

said that Laxman Singh was working as an Advocate Clerk and he died about ten (10) years ago. He was further asked about other details regarding place of residence of Laxman Singh. Balram Prasad Sahu (appellant no.

1) was examined as A.W.- 3. He has supported the contention made by him in the application filed for grant of Probate. He says his grand father Kamal Sahu died on 20.11.1993 at his residence and he had left behind him six (6) sons and two (2) daughters. The properties falling within Mauza - Mahulia were recorded in the name of his grand father Kamal Sahu. Partition of the properties between Kamal Sahu and his sons had taken place in the year 1978. The properties lying within Mauza - Mahulia was kept by Kamal Sahu for his own use and occupation. It is disclosed after partition of the properties, sons of Kamal Sahu had left taking care and, therefore, his grand father Kamal Sahu had started living with him and his brothers. On being satisfied with the services rendered by them, Kamal Sahu had decided to execute a Will for landed properties lying within Mauza - Mahulia, area measuring - 9 Acres 43 Decimals in favour of appellants on 09.11.1983. The Will was prepared in presence of witnesses Ram Kumar Sahu and Heerakant Jha and scribe was Laxman Singh, Advocate Clerk. Kamal Sahu had put his LTI on the said Will in presence of witnesses Ram Kumar Sahu and Heerakant 4 M.A. No. 323 of 2006 Jha. After execution of said Will, it was brought to the notice of the family members including opposite parties. After execution of said Will, Kamal Sahu survived for further ten years and he died in the year 1993. He got the Will from the Almirah of his grand father Kamal Sahu and filed an application for grant of Probate/ Letter of Administration. He says that his aunt - opposite party nos. 7 and 8, have raised No Objection by filing a petition supported with affidavit. He has been cross examined with regard to the properties mentioned in the Will. He has stated that the properties bequeath by the Testator were the self acquired properties of Late Kamal Sahu. He says in paragraphs - 23 and 24 that partition of the properties had taken place between Kamal Sahu and his sons, both orally and in writing, but he is not acquainted with the documents relating to partition. Attention of this witness has been confronted on the statements which was not in the pleadings. Dileshwar Sahu (A.W.-4) has proved the Death Certificate. He has admitted his signature appearing on the Death Certificate and the same has been

marked Exhibit-3. Bindeshwar Yadav (A.W.-6) is also a formal witness and he has proved certain receipts and documents pertaining to the properties bequeath.

6. Opposite Party No. 1 - Rameshwar Sahu has stated that he was not aware about any Will executed by Kamal Sahu prior to receiving the Notice issued in connection with the Probate Case filed by the appellant. He says that he met with witness Heerakant Jha who told him that no such Will was prepared in his presence and he had not signed the Will. According to this witness, Heerakant Jha is alive and he resides in Khelari in the district of Ranchi. In the year 1983, the appellants were hardly aged about 14 - 15 years of age. On being questioned regarding properties belonging to the family, he says that he is not acquainted with the entire properties. He could not say which of the properties were self acquired properties of Kamal Sahu and which of the properties were ancestral properties. Opposite party no. 2 - Nageshwar Sahu happens to be father of the appellants. He has filed show-cause supporting case of the appellants but he did not file any written statement. This witness has not only justified execution of the Will executed in favour of the appellants rather gone to the extent of giving details of the properties acquired by Kamal Sahu and the family. He has specifically stated that the properties lying within Mauza - Mahulia was acquired by his father Late Kamal Sahu and it 5 M.A. No. 323 of 2006 was owned and occupied by him. He says that oral partition between the brothers and his father Kamal Sahu had taken place in the year 1981. After said partition, his father Kamal Sahu started living with him. The opposite party nos. 1, 3, 4 to 6 had neglected their father and they had stopped taking care of Kamal Sahu. After that, his three sons who are the appellants in the case, had started taking care of Kamal Sahu by providing food, medicines and other comforts. His father died on 30.10.1993 at his residence. The expenses incurred for last rituals were borne by appellants. In his cross examination, he says that the properties bequeath by Testator is under possession and occupation of appellants and they have been cultivating it. Newas Kujur (A.W.-1 for Opposite party nos. 4, 5 and

6) has said that all the properties belonging to Kamal Sahu and his sons are the joint properties and they are having joint possession over the same. No Will was ever executed by Kamal Sahu in favour of the appellants. Birbal Sahu (A.W.-2 for

opposite party nos. 4, 5 and 6), Sheonandan Sahu (A.W.-3 for opposite party nos. 4, 5 and

6) and Kishori Sahu (O.P. no. 5 herein and A.W.-3 for opposite party nos. 4, 5 and

6) have almost repeated the same facts that the Will brought by the appellants for grant of Letter of Administration is false and fabricated. The document has been created to grab the properties left by Kamal Sahu. As a matter of fact, the opposite party no. 2 - Nageshwar Sahu, who happens to be father of the appellants, has cooked up story of execution of Will by Kamal Sahu and assisted the appellants in preparing a forged Will so that undivided properties left by Kamal Sahu could be acquired by him alone.

7. Learned counsel for the appellants has submitted that the learned Additional Judicial Commissioner has mis-appreciated the evidence and misconstrued the law relating to Succession Act. The Court is supposed to see genuineness of the Will and the propounder owe a liability to prove the execution of the Will in accordance with law. The Will brought on record has been proved as required under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. One of the attesting witnesses Ram Kumar Sahu (A.W.-1) has clearly stated that the testator - Kamal Sahu, on being satisfied with the services rendered by the appellants, had decided to execute his Will. He came to Ranchi Civil Court and requested Clerk Laxman Singh to prepare a Will. Accordingly, the Will was prepared in the writing of Laxman Singh and it was read over to Kamal Sahu after which he put his LTI in presence of A.W.-1 - Ram Kumar Sahu 6 M.A. No. 323 of 2006 and another attesting witness Heerakant Jha. The Will executed by Kamal Sahu has been proved as Exhibit-2 whereas the attesting witness - A.W.-1 has proved his signature as Exhibit-1 and signature of Heerakant Jha as Exhibit - 1/1. Since requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act have been fulfilled, the learned Additional Judicial Commissioner ought to have granted Letter of Administration in favour of the appellants. The learned Additional Judicial Commissioner has gone to discuss details of the properties which was uncalled for. The reasonings for rejecting the Will, as assigned, are not tenable and the impugned Judgment dated 22.06.2006

passed by Additional Judicial Commissioner No. VI, Ranchi in connection with Probate Title Suit No. 05/2004 arising out of Probate Case No. 57/1997, is liable to be set aside and Letter of Administration may be directed to be granted in favour of the appellants against the Will executed by Late Kamal Sahu. Appellants have placed reliance on the Judgment in the case of Mathew Oommen Vs. Suseela Mathew reported in AIR 2006 SC786 and in the case of Jagdish Chand Sharma reported in (2015) SCCR457 8. Learned counsel for the respondents have opposed the arguments and submitted that the Will is forged one. The execution of Will and its presentation before the Court are all shrouded with suspicion. The appellants were minor at the time of execution of the alleged Will and, therefore, question of rendering services to Kamal Sahu at his old age, does not arise at all. The opposite party no. 2 - Nageshwar Sahu is the mastermind behind presentation of alleged Will and he has engineered and designed the episode to grab the properties left by Kamal Sahu. Since execution of Will is shrouded with suspicious circumstances, the learned Additional Judicial Commissioner has rightly rejected the same. Learned counsel for the respondents has placed reliance in the Judgment in the case of Balathandayutham and another Vs. Ezhilarasan reported in (2010) 5 SCC770 and the Judgment in the case of Miss Chitra @ Tulu Mitra & others Vs. Smt. Bandana Mitra & others reported in 2014(3) JBCJ1Jharkhand High Court) and pointed out that S.L.P.(C) No. 8274 / 2015 was preferred against the Judgment of this Court in the case of Miss Chitra (Supra) stood dismissed vide order dated 11.05.2015 .

9. I have gone through the impugned Judgment, documents and evidence available on record. It is settled law that a Will is to be proved as other documents are proved according to law and the Court shall proceed with the enquiry in the like manner. The propounder would be called upon to 7 M.A. No. 323 of 2006 show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will. Therefore, the propounder of Will has to prove its due and valid execution by eliminating suspicious circumstances. If there are suspicious circumstances surrounding the execution of a Will, the propounder must remove it by cogent and satisfactory evidence. Whether a Will is genuine or

not, has to be decided on the facts of each case. There is no mathematical equation to determine whether a Will is genuine or not. The authenticity of Will depends on the circumstances surrounding its execution and the quality of the evidence that is led in respect of its genuineness. The natural conduct of human being is to acquire property for spending his life smoothly and also in order to make his future life secure. They become more attached with the property than their children, relatives and friends. In order to protect the property so acquired, he takes all best efforts not only during his lifetime but also try to make arrangement that the property after his death should not be misutilised. What I mean to say is, if the descendants are not competent to inherit the property, he makes special arrangement by executing a Will or by transferring the property to a right hand by way of gift. The Will is a kind of document by which the testator expresses his last wish to bequeath his property, therefore, the Court should be more cautious, careful and responsible when such Will is presented either for grant of Probate or for Letters of Administration. The Court must visualise the circumstances under which the Will was executed and if the circumstances are not free from suspicion, the propounder shall be called upon to remove those suspicious circumstances with cogent and convincing explanation.

10. Now coming to facts and circumstances as well as evidence available on record. It appears that the alleged Will was executed on 09.11.1983 and the testator survived for further ten (10) years after execution of said Will. A.W.-1 in para-15 of his deposition has stated that the testator on being satisfied with the services rendered by the appellants, had decided to prepare a Will on 07.11.1983 and it was prepared in presence of A.W.-1 and Heerakant Jha. But in paragraph-11 he says that Kamal Sahu executed his first and last Will on 09.11.1983. This witness again in paragraph-19 has deposed that on 09.11.1983, Kamal Sahu accompanied by this witness and Heerakant Jha, had come to Ranchi Civil Court to execute a Will and they had come to Ranchi in the morning on a 8 M.A. No. 323 of 2006 Bus. The Will was prepared by Laxman Singh. The statement given by this witness in his examination-in-chief is itself contradictory. At one point of time he says it was prepared on 07.11.1983, again he says that it was prepared on 09.11.1983. He is the only witness who has proved execution of Exhibit- 2. The scribe has not been examined and it was deposed that he died ten years prior to



the date of examination of this witness. So far another attesting witness Heerakant Jha is concerned, he says he died about 3 - 4 years ago. A.W.-2 has been examined on the point that scribe Laxman Singh was known to him and both of them were working as Advocate Clerks in Civil Court, Ranchi and they were also having their seresta side by side. Surprisingly enough, his attention was not drawn towards the writings and signature of Laxman Singh allegedly appearing in the Will. A.W.-2 has been examined only to prove that a person known as Laxman Singh was working as Advocate Clerk in Civil Court, Ranchi. So far another attesting witness Heera Kant Jha is concerned, the witnesses examined on behalf of the opposite parties have clearly stated that he is alive and residing at Khelari but he has not been summoned to corroborate the evidence of A.W.-1. Needless to mention that no certificate regarding death of Laxman Singh or regarding Heerakant Jha has been brought by propounder to justify the contention.

11. Now another suspicious circumstance is that the appellants, according to their deposition in Court, were acquainted about execution of the Will since from the year 1983 when it was executed. According to evidence of appellant - Balram Sahu, contention of the Will was known to all the family members including opposite parties. The contesting opposite parties had not raised their voice at that point of time even after dis- inheritance of the properties. The story brought on record is completely silent as to what happened to that Will which was allegedly executed in the year 1983. Admittedly Kamal Sahu died in the year 1993. But immediately after his death, no application for grant of either probate or Letter of Administration was filed by the appellants. It is true that for grant of probate or Letter of Administration against a Will, there is no limitation but then presentation of Will for grant of Letter of Administration within the reasonable time would certainly support its genuineness. On one fine morning the appellant say that they have got a Will from the almirah of their grand father Kamal Sahu and then filed application for grant of probate/ Letter of Administration. They did not say as to when they got the Will from almirah but the fact remains that the application was filed in the month of 9 M.A. No. 323 of 2006 February, 1997 i.e. four years after death of Kamal Sahu. In this connection it is necessary to remember that partition between the parties had taken place in the year 1978 and in the year 1981 as per the evidence available on record but no document regarding partition of the

properties has been brought on record by any of the parties. The opposite party no. 2 and the appellants have stated that the properties lying within the Mauza - Mahulia, which is the subject matter of the Will, was kept by Late Kamal Sahu for his own livelihood after the partition, but no evidence has been brought on record to show that under which partition, Kamal Sahu had kept properties lying within Mauza Mahulia for his use and occupation. It is said that after partition, except opposite party no. 2, other sons of Kamal Sahu had stopped taking care of him and, thereafter, he had started living with his grand sons (appellants). It is also contended that they had provided services to their grand father and they took all care of him. Immediately within one or two years Kamal Sahu satisfied with the services rendered and decided to execute a Will in favour of the appellants and that was done in the year 1983. It is not a case of the appellants that Kamal Sahu was feeling insecurity of his life or he was not maintaining good health and that is why he has decided to declare his last wish by way of Will. Survival of Kamal Sahu for further ten years suggests that he was having sound health and he was having sufficient properties for his livelihood and, therefore, the question of his being dependent on the appellants is a question to be answered. Even age of the appellant - Balram Sahu if calculated from the date on which A.W.-1 was examined, it would be gathered that he was hardly 17 - 18 years in the year 1983. His remaining two brothers were younger to him, so they must be between the age of 14 to 16 years. If that was the age of the appellants in the year 1983, further question that they were rendering services, providing foods and medicines to their grand father Kamal Sahu, is also suspicious circumstance. It further reveal that the appellant - Balram Sahu in his deposition in Court has adduced certain facts beyond pleadings which could not be considered.

12. Before concluding, another suspicious circumstance which is appearing is that the testator did not conceal execution of alleged Will from the family members including the opposite parties. Had it been so, he was expected to be accompanied by either of the appellant at the time of execution of said Will. The appellants did not say that Kamal Sahu before execution of said Will, had ever disclosed to them about his wish to execute a Will in their favour. 10 M.A. No. 323 of 2006 The learned Additional Judicial Commissioner has discussed all these aspects and the surrounding suspicious circumstances and has rightly dismissed

the application filed for grant of Letter of Administration placing reliance on the findings of this Court given in the case of Miss Chitra @ Tulu Mitra & others (Supra) and also considering facts and circumstances appearing in the case at hand, I do not find any merit in this appeal. Accordingly, the same stands dismissed. (D. N. Upadhyay, J.) Jharkhand High Court, Ranchi. Dated 22nd July, 2016 RC/

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**