

Partha Sarthy

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Court : Patna

Decided On : Jul-29-2011

Judge : Jayanandan Singh, J.

Acts : [Indian Succession Act, 1925](#) - Section 276

Appeal No. : Test Case No.9 of 2010

Appellant : Partha Sarthy

Advocate for Pet/Ap. : M/s Pushkar Narain Shahi; Manish Kumar, Advs.

Judgement :

1. Applicant has filed this application under section 276 of the [Indian Succession Act, 1925](#) (hereinafter referred to as "the Act") for grant of Probate in respect of the Will and the Codicil executed by his father Late Justice L.M.Sharma (Testator). In the application, besides giving life sketch of the Testator, it is stated that, after his superannuation from the post of Chief Justice of India on 12.2.1993, the Testator came to reside permanently in his house situated at A.N.Path, P.O. and P.S.-Kadam Kuan, in the town and District Patna, within the jurisdiction of this Court. After his superannuation, he engaged himself in spiritual activities and lived the life of simplicity, surrounded by his family and friends, at his residence at Kadam Kuan, till he died on 3.11.2008. It is stated that before his death, considering his advance age and while he was in sound health, body and mind, he decided to execute a Will. Accordingly, he executed the Will on 31.8.1995 and got the same

attested by two witnesses in his presence. Later on, he executed a Codicil on 5.6.2006 at his Kadam Kuan residence itself, introducing some minor changes in the terms and conditions of the Will and got the same also attested by the same witnesses. Copies of the Will and the Codicil have been annexed with the petition as Annexures- W and W/1 respectively.

2. It is stated that besides the applicant, the Testator left behind his widow and his daughter, as named in paragraph 7 of the application, as Near Relatives, besides the applicant. In the Will, the applicant was appointed as Executor, who has acted upon the Will as per the desire of the Testator. List of assets, immoveable as well as moveable and schedule of debts, have been annexed with the application as Annexures- A and B respectively. In the application, the applicant has mentioned the time of death of the Testator as 3.00 A.M. He has specifically stated that the Will was the last Will of the Testator and it was duly executed. In the application the details of the desire of the Testator in respect of mode and manner of administration of his Estate and his bequeaths out of his moveables and immovables have been narrated. It is stated that the Testator himself had got the Will as well as the Codicil attested by two witnesses, namely, Rajendra Sharma and Devendra Prasad Sharma.

3. As stated earlier, the list of assets and schedule of debts and funeral expenses are annexed with the application as Annexures-A and B respectively and it is stated that the applicant has been appointed Executor of the Will. It is also stated that the deceased died while living at his Kadam Kuan residence at Patna within the jurisdiction of this Court. It is stated that the original Will and the Codicil are being filed in the Court separately in a sealed cover. In the circumstances, this Court finds that the application filed by the applicant under section 276 of the Act is in accordance with the requirements of law.

4. The application was accordingly registered and the applicant filed the original Will and the Codicil in a sealed cover within the time granted by this Court. Thereafter, by order dated 11.2.2011 general citation was ordered to be published in the Patna editions of "The Times of India" and "Prabhat Khabar" within two weeks. On 25.2.2011, the Court was informed that Near Relative nos. 1 and 2, as

mentioned in paragraph 7 of the application, have appeared through their learned counsel Mr.Kumar Vikram. But they did not file any caveat or affidavit in opposition with a view to contest the prayer of the applicant. Applicant himself was son and Near Relative No.3. Therefore, this Court found that there was no requirement for issue of special citation to the Near Relatives.

5. On 18.3.2011, on the prayer of learned counsel for the applicant, time was allowed to file Examination-in-Chief of the witnesses on affidavit. Examination-in-Chief of witnesses were filed on 8.4.2011 and on that day applicant was examined as A.W.1, one Rajendra Sharma, attesting witness on the Will and the Codicil was examined as A.W.2 and Devendra Prasad Sharma, another attesting witness on the Will and the Codicil was examined as A.W.3. Learned counsel for other Near Relatives declined to cross-examine them. Therefore, witnesses were discharged.

6. Learned counsel for the applicant submitted that he did not intend to produce any other witness and learned counsel appearing for the Near Relatives also submitted that he also did not intend to produce any witness. Therefore, evidence of both the parties was closed and the matter was fixed for hearing.

7. On 6.5.2011, I.A.No.3446 of 2011 was put up for orders by which applicant prayed for correction of certain formal typographical mistakes in the evidence of the witnesses. This Court found the corrections sought for as formal and allowed the I.A. and directed the evidence of three witnesses to be treated as corrected. Matter has been finally heard on 8.7.2011.

8. In his evidence, the applicant has stated that the original Will and the Codicil were executed by his deceased father and the same are in his own handwriting. He states that the Codicil was typed by him (applicant) as dictated by him and was duly verified and signed by his father. He has stated that hand written part of the Codicil is in own handwriting of his father and that also has been signed by him. On his identification, original Will was marked as Ext.-1 and signature of the Testator on the same was marked as Ext.-2 series. Original Codicil was marked as Ext.-3 and signature of the Testator on the Codicil was marked as Ext.-4 series.

9. Rajendra Sharma (A.W.2) in his statement on oath has said that on 31.8.1995 the Testator had called him and one Devendra Prasad Sharma (A.W.3) and had asked them to become attesting witnesses on his handwritten Will. It is stated that he identified the handwriting of the Testator and therefore he put his signature on the Will as a witness. After him, the said Devendra Prasad Sharma (A.W.3) also put his signature. He states that on 5.6.2006 the Testator again called him and the said Devendra Prasad Sharma and on a typed Codicil, on which some portion was written in the hand of the Testator, asked them to attest as witnesses. He states that he identified the writing and signature of the Testator and therefore he put his signature on the same as a witness. After him, said Devendra Prasad Sharma also put his signature as a witness on the said Codicil. Testator was in a sound state of mind and body. Later on, he died at Kadam Kuan residence on 3rd November, 2008. In his evidence, he has identified the signature of the Testator and the writing of the Testator on the original Will and the Codicil. He has also identified his signature on the Will and the Codicil which were marked as Ext.-5 series.

10. A.W.3 is said Devendra Prasad Sharma. In his statement on oath, he has stated that he knows the applicant who is the only son of the Testator. He gives details of other Near Relatives of the Testator. He also states that on 31.8.1995 Testator had called him and said Rajendra Sharma (A.W.2) and asked them to attest the Will handwritten by him as a witness. He identified the signature and writing of the Testator and therefore, he put his signature on the same as a witness. He also says that he was called by the Testator again on 5.6.2006 along with said Rajendra Sharma (A.W.2), and on the typed copy of Codicil, on which some portions were handwritten by the Testator himself, asked him also to put his signature as a witness. On his request, this witness also attested the Codicil after Rajendra Sharma as a witness. He also states that at the time of execution of the Will and the Codicil, the Testator was in a fit and sound state of mind and body. He died at Kadam Kuan residence on 3.11.2008. In his statement, he has identified the signature of the Testator on the Will and the Codicil already marked as Exts. 2 series and 4 series. He also identified his signature on the Will and the Codicil, which were marked as Ext. - 6 series.

11. As stated earlier, the other Near Relatives have not filed any caveat or affidavit in opposition with a view to contest the prayer of the applicant. Learned counsel for the said Near Relatives also declined to cross-examine the witnesses.

12. In view of the evidence of the witnesses, this Court has perused the original Will of the Testator. This Court finds that the Will is written on two letter heads of the Testator on both sides and is in his own pen and ink. The Testator has executed the Will and put his full signature on the first page and at the bottom of the Will on the last page and has put his short signatures at pages 2 and 3 of the Will. This Court also finds that the two attesting witnesses have signed the Will on the second and third page of the Will as witnesses specifically stating that they were putting the signature as witness at the request of the Testator and on the identification of the signature of the Testator by himself. This Court finds that the Testator had clearly intended to give effect to the writings as a Will as above his signature at pages 1 to 4 he has, in his own pen, written "executed this Will". The witnesses have identified the signature of the Testator on the Will as well as signature and attestation of the witnesses which have been marked as Exhibits. Thus, this Court finds that the Will conforms to the requirement of section 263 of the Act.

13. Thereafter, this Court perused the Codicil, marked as Ext.-3. The first page and some portions of the second page of the Codicil are typed on A-4 size paper. On the second page, about 2/3 part is hand written in the pen and ink of the Testator himself. Handwriting of the Testator has been identified by the witnesses. Both the pages of the Codicil bear the signature of the Testator in full with an endorsement "Executed this Codicil". A few corrections in the handwritten part of the Codicil have been initialed by the Testator. In the hand written part of the Codicil the Testator has stated in his own pen that typed part of the Codicil was first prepared on his dictation. He went through it carefully and made some corrections and thereafter Codicil has been prepared in final form. He says that he has gone through it again carefully and he finds it accurate and correct. Hence, he says that he put his signature at the bottom of the same. It is also stated in his pen that this Codicil shall be witnessed by two gentlemen, who have witnessed the Will. This Codicil also bears the signature and endorsement of the said two

witnesses with clear stipulation that they were attesting the Codicil at the request of the Testator and after he identified the signature on the same. The hand written part of this Codicil, signature of the Testator and witnesses have been duly identified and Exhibited by the witnesses, as discussed above. In the Circumstances, this Court finds that the Codicil is supplemental to the Will and is in accordance with law and it contains true intention of the Testator in respect of some changes in the terms and conditions of the Will and explains the manner in which the same has been executed.

14. The witnesses have stated that the Will is the last Will of the Testator and the Codicil was duly executed by him introducing some changes in the terms and conditions of the Will and laying down the manner in which the Will had to be executed. They have also stated that the Testator was in a sound state of mind and body at the time of execution of the Will and the Codicil. This Court finds that the writings on the Will and the Codicil are clear and in even flow and appears to be written in normal course with full consciousness and in a sound state of mind and body. This Court further finds that there is nothing on record to show that this Will and the Codicil were not the last document executed by the Testator for management of his Estate, and in the Will, read with the Codicil, the Testator has taken appropriate care of the Near Relatives and his friends and has appointed his only son, the applicant, as Executor of the Will in respect of his property and the Estate.

15. In the circumstances, this Court is satisfied that the Will and the Codicil are genuine and the last wishes of the Testator, duly executed by him in full consciousness and in a sound state of mind and body, duly attested by the witnesses and satisfies the requirements of law.

16. As a result, this application is allowed. Let a probate be issued in favour of the applicant in respect of the Will and the Codicil.