IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.406 of 2023
In
FIRST APPEAL No.120 of 2019

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Miss Nora Hana Peters D/o Late C.N. Peters Resident of Kalambia Kothi, Goshalla Road, Mithanpura, P.O.- Rama, P.S.- Mithanpura, District- Muzaffarpur.

... ... Appellant/s

Versus

General Citation x

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Mithilesh Kumar Rai, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 20-08-2026

Heard Mr. Mithilesh Kumar Rai, learned counsel for the petitioner.

2. The present petition has been preferred:

"against the order dated 03.07.2019 in Probate Case No. 44/2018, passed by learned Addl. District and Session Judge- XIV, Muzaffarpur whereby and whereunder the learned court below has been pleased to observe that the will executed by testator cannot held to be genuine in the eye of law and further rejected and the probate case has been dismissed."

3. The matter relates to a piece of land having following details:

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Khata No. 276;
Khesra 589;
Area 3511 sq. ft.;
Mohalla Mithanpura;
District Muzaffarpur.

4. The appellant claims to be the sister-in-law, (sister of **late Mona Sah @ Mona Angelina Das**), who was wife of the landholder, late **Daniel Das**.

5. The claim has been made that on **30.06.1987** in sound mind and good health, **Daniel Das** executed will with regard to the aforesaid land in favor of the appellant, **Ms. Nora Hana Peters**. Subsequently, it got mutated both before the local Circle Office as also the Municipal Corporation and the receipts were granted/payments made.

6. The record shows that **Angelina Das** died on **30.12.2014** leaving behind her husband and sister (appellant herein). Subsequently, **Daniel Das** also died on **04.09.2017**, leaving behind the appellant.

7. The contention is that Daniel Das and Angelina Das were issue-less.

8. This followed the **Probate Case No. 44 of 2018** (**Ms. Nora Hanna Peters vs General Citation**).

9. Learned Additional District & Sessions Judge XIV, Muzaffarpur took up the matter on **03.07.2019** and after

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recording the facts of the case gave his concluding remarks which stand incorporated in paragraph 15 to 22 and read as under:

> *15. In the matter at hand, it is worth to be noted that it has been averred by the applicant in para 12 and 21 of her probate application supported with affidavit that witnesses of the Will in question have died. Astonishingly, in their testimonies. PW's 1 to 3 have although supported the all other averments made in the probate application, but have also stated in para 12, 11 & 11 of their affidavited examination in chief, respectively, that one witness Ram Sahay Verma has died and another witness Bunty Walter is aged about 95 years and he can not move which is in absolute contrast to the affidavited statement made in the very probate application of this case, as mentioned above. The aforesaid give rise a strong suspicion about the matter at hand that the applicant has not come up with clean hands. Even if the same be ignored, though not ignorable, the applicant has at no occasion prayed before the*

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court to issue commission for the evidence of the witness Bunty Walter stated by the PW's to be alive. Needless to mention that applicant has not brought any attesting witness of the purported Will in the witness box to support the lawful execution of the Will in question as required by law. In other words, the said witness in his evidence before the court had to satisfy the attestation by him and another attesting witness ho also figures as an attesting witness in the purported Will, lest it will fall short of proof of a Will for the simple reason that the execution of the Will does not merely mean the signing of it by the testator, but it also means fulfilling the proof of all the formalities required under ***Section 63 of the Succession Act****. Therefore, the applicant has manifestly remained unsuccessful to fulfill the mandate enshrined in* ***Section 68, Indian Ev 03.07.2019 idence Act*** *read with* ***Section 63 of the Succession Act*** *that the Will in question required to be attested must be proved by one of the attesting witnesses and has been attested & executed accordingly.*

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16. ***Even if assuming that both the attesting witnesses of the purported Will in question have died, Section 69, Indian Evidence Act empowers the propounder to prove the attestation of attesting witness, at least the handwriting and signature of the person executing the document in the handwriting of that person and this privilege is given only when no attesting witness is available. But in that event, the applicant needs to satisfy the court by lawful and cogent evidence that the attesting witness is not available. But in the case at hand, the applicant has come up with oscillating facts and evidence on the point of availability of attesting witness of the purported Will. At the cost of repetition, it is to mention that in the probate application, it has been averred by the applicant that the attesting witnesses are dead and in the evidence of PW's, it has been stated that one is dead and one is alive who is aged about 95 years and can not come to court. Pertinently, the applicant has not made any prayer before the***

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court for issuance of commission to record the statement of the alleged old aged infirm alive attesting witness Bunty Walter and thus, law makes a presumption of adverse inference against the applicant as she was required to prove the lawful execution of the Will in question.

17. In ***Rabindra Nath Mukherjee Vs. Panchanan Banerjee, (1995) 4 SCC 459****, it has been held that, "when the Will is a registered one and endorsement by the Registrar showing that the testator was in sound disposing state of mind and it was executed out of testator's free will, it goes a long way to establish the genuineness of the Will". But in the instant case neither the applicant has made out such case nor the Ex 1 Will is suggestive of the fact that it has been verified/certified by the Registrar in the manner as desired under aforesaid authority.*

18. It is seuled principle of law that it is the duty of the court to satisfy itself with regard to validity of the Will and till such time, the court may not come to the conclusion that the Will

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propounded by a party is the last wish of the testator and no relief, based upon the Will can be granted.

19. In the given facts and circumstances elucidated above, I am of the well considered opinion that on the basis of evidence adduced by the applicant that Ex.1 Will has been purportedly executed by the late Daniel Das as his last Wish cannot be held to be duly and lawfully executed and to be genuine one in the eye of law.

20. For the reasons illustrated in the aforegoing paragraphs, the prayer for probate of Will in this case does not deserve to be allowed and is hereby rejected. Accordingly. this probate case is dismissed.

21. However, it may be made clear that the applicant will not be precluded to bring a case for succession certificate, if she desires so, in respect of the properties depicted in Schedule "I" at the foot of the application of this case as per law.

22. Given under the hand and seal of this court on this, the 3rd day of July, 2019.

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(emphasis added)

10. This followed the present appeal.

11. Learned counsel for the appellant submits that the facts which are not in dispute is/are:

(i) the land belonged to Daniel Das;

(ii) he was married to the appellant's sister, Mona @ Angelina Das;

(iii) on 30.06.1987, she being the only heir, a Will was executed by Daniel Das;

(iv) the couple died issueless between 2014 to 2017.

12. The submission is that after the sister and the brother-in-law died, immediately the probate case was filed by her but erroneously and despite the examination of three witnesses including the appellant, a different view has been taken which needs interference.

13. This Court has noted the two points that have been recorded by the concerned court to dismiss the petition;

(i) the appellant/applicant in paragraph 12 and 21 of the probate application supported with affidavit averred that all the witnesses whose signatures are there in the Will are no more;

(ii) however, during the testimonies, the

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*PWs 1 to 3 informed that one of the **witness**, **Bunty Walter** is alive, 95 years old and cannot move.*

14. This Court is of the opinion that when one of the witness was alive, the wrong fact should not have been incorporated by putting it on affidavit that all the witnesses have died. It is further to be noted that the appellant made no effort to make a request before the concerned Court for examination of the only surviving witness by recording his statement either at his home and/or through the video conferencing.

15. At this stage, learned counsel for the petitioner has provided an order of the Patna High Court in the case of **Bhulan Mahto versus State of Bihar and Ors (M.A. No. 307 of 2011, disposed of on 07.07.2019)** with reference to **paragraph 10 and 14** which read as under:

10. The aforesaid statement in the petition would make it clear that there is sufficient averment to show that the Will was a free Will and executed and registered in good mental and physical health of the testator. The technical words used in the statute need not be repeated in the pleading. Therefore, the court below has apparently committed error of record in

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concluding that there is no pleading of free Will and disposable mental condition of the testator. Genuineness of a Will cannot be tested on the basis of absence of evidence as to who performed the Shraddh. Offer and acceptance in the matter of Will is not required. Hence, statement of P.W.2 that before execution of the Will, testator offered and appellant accepted the offer has no relevance to decide the issue.

14. I do not find any reason that genuineness of the Will and disposing state of mind of the testator can be doubted only for the reason that details of the property is not mentioned in the Will. Non mentioning of the property leaves it open that all the property left by the testator would go to the person named in the Will. Moreover, the law does not require that what Will should contain, save and except that it should depict the last desire of the testator. Moreover, when the Will is a registered Will, the presumption of its genuineness is stronger and the burden of the rebuttal is heavier.

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16. This Court has taken note of the aforesaid case and has also found that in paragraph 19, of the same order wherein it has recorded that Tapeshwar Mahto (Testator) went to the registry office on 01.06.1998 to execute their registered deed of Will in favor of the appellant in a good mental and physical health and he voluntarily asked his scribe, Rajeshwar Prasad to scribe the Will. It was read over to him, and after finding it correct, the Testator put his LTI on the document in presence of the witness as also Shiv Govind Bhagat.

17. It would be appropriate to incorporate paragraph 19 of the said case, which read as under:

> *"19. P.W.1, Bhulan Mahto is appellant and beneficiary of the Will. P.W.2 Chandrama Prasad is attesting witness. In Para-5 of his deposition, P.W.2 stated that Tapeshwar Mahto (testator) went to the Registry office on 01.06.1998 to execute registered deed of Will in favour of appellant in a good mental and physical health and he voluntarily asked his scribe, Rajeshwar Prasad to scribe the Will. The scribe read over to the executant and after finding it correct, the testator put his L.T.I. on*

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the document in presence of this witness and in presence of witness Sheo Gobind Bhagat. This witness Chadrama Prasad identified the L.T.I. of the testator on the Will and on the request of the testator on the Will and on the request of the testator he and Sheo Gobind Bhagat signed on the Will in his presence. Thereafter, the testator took the document to the Sub-Registrar and admitted execution of the document. Then the document was registered."

18. In the said case, their Testator himself went to the registry office, a fact that made the Coordinate Bench to pass an order in favor of Bhulan Mahto, who is the beneficiary of the will.

19. Unfortunately, the said case under no circumstance can be made applicable in the present appeal. On the contrary, despite Daniel Das, who according to the appellant executed the Will on 30.06.1987 died, thirty years later, on 04.09.2017, there is nothing on record to show that he was taken to the government office and in the presence of the witnesses, after reading it in sound health and mind, he put in his signature.

20. This take the matter to only one conclusion, the

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present appeal is bereft of merit. Accordingly, **MA No. 406 of 2023** is dismissed.

21. The appellant is free to approach appropriate court for the redressal of her grievance as directed by the court while passing the order in question.

(Rajiv Roy, J)

sanny/-

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CAV DATE	N/A
Uploading Date	22.08.2026
Transmission Date	N/A

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