

HEADING OF DECISION IN CIVIL SUITS

IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE,
BHUBANESWAR,

PRESENT:- *Pranab Kumar Routray, L.L.M,*
1st Addl. Senior Civil Judge,
Bhubaneswar

C.S.9/2012

(Arising out of Test Case No. 06/2009)

1. Sri Prasanta Kumar Panigrahi, aged about 55 years,
S/o: Late Kishore Chandra Panigrahi,
At: Qtr. No. Type VI-4/1, Unit-1,
P.S.: Capital, Bhubaneswar,
Dist.: Khurda.
2. Smt. Snigdha Rani Panigrahi, aged about 47 years,
W/o: Sri Prasanta Kumar Panigrahi,
At: Qtr No. Type VI 4/1, Unit-I,
P.S: Capital, Bhubaneswar, Dist: Khurda.
... Prob. Petitioner.

-Versus-

1. Prema Mayee Panigrahi, aged about 80 years,
W/o: Late Kishore Chandra Panigrahi,
At State Bank Road, Berhampur.
2. Smt. Usha Rani Tripathy, aged about 60 years,
W/o: Sankarshan Tripathy,
Flat No.7/1, Elite Apartment,
Sahi Bag, Ahmedabad, Gujarat.
3. Smt. Umarani Mohapatra, aged about 58 years,
W/o: Ashok Kumar Mohapatra,
Plot No.C-21, B.J.B Nagar,
Bhubaneswar.
4. Sri Sushanta Kumar Panigrahi, aged about 59 years,
S/o: Late Kishore Ch. Panigrahi,
Hatibandha Street,
P.S.: Baidyanathpur, Berhampur

5. Smt. Leela Das, aged about 51 years,
W/o: Hare Krushna Das,
Plot No. K-517, Sector-20,
Gandhinagar, Gujurat.

... Opposite Party

COUNSEL APPEARED

For the Plaintiffs : Sri Dev Das & Associates
For the Defendant no.2 and 4 : Sri S.C. Rath

DATE OF ARGUMENT ; 01-02-2014
DATE OF JUDGMENT ; 11-02-2014

J U D G M E N T

1. The probate petitioners have filed this case u/s.276 of Indian Succession Act for grant of probate to the Will dtd.30-08-1999 executed by testator Kishore Chandra Panigrahi in respect of the property described in the Schedule A of the plaint.

2. The case of the petitioner-legatees is that petitioner no.1 is the elder son and petitioner no.2 is the elder daughter-in-law of Late Kishore Chandra Panigrahi, the testator whereas Opp. Party no.1 is the widow, O.Ps. 2, 3 & 5 are the daughters and O.P. no.4 is the younger son of said Kishore Chandra Panigrahi who died on 11-06-2000 at Berhampur. As per the petitioners, said Kishore Chandra Panigrahi was an Advocate by profession and was in active practice and during his life time he purchased Schedule A property, i.e. a house from one Smt. Meena Singh, the original allottee of the said house by the

housing board. Accordingly ownership was changed in the name of Kishore Chandra Panigrahi vide letter no.638 dtd.07-01-2000 by the housing board. A regular lease cum sale deed is yet to be executed by the housing board in favour of the changed allottee. The executor while staying in his own house at State Bank road, Berhampur permanently executed a Will in his own hand in favour of the petitioners being his elder son and elder son-in-law respectively on 30-08-1999 in presence of witnesses Suresh Kumar Choudhury and O.P. no.4, his younger son in a fit and disposable state of mind. The said Will is the last Will and codicil of the testator which was discovered from his office after his death. Under the said Will the testator has declared to have bequeathed the schedule property in favour of the petitioners. Hence, the petition.

3. Though all the O.Ps were duly summoned but only O.P. no.2 filed her written statement and though O.P no.4 did not file any written statement but participated in the proceeding.

 O.P. no.2 in her written statement has alleged that her father had never purchased the schedule property nor was the owner in possession thereof. He was an income tax assessee and had never shown purchase of the property in his income tax papers. On the other hand, petitioner no.1, her elder brother was the Executive Engineer, P.H.D and being promoted as Superintendent Engineer had purchased the property from Meena Singh but in the name of his father out of his illegal income. Her father had never

executed the Will in question but being old and under the influence of his children might have been constrained to write the same and the language of the document would go to show that it is a gift and not a Will. A gift is to be compulsorily registered but in absence of the same the document does not convey any title in favour of the petitioners. She has also stated that the petitioners have mentioned about the Will in Civil Suit no.149/2005 of the Court of Senior Civil Judge, Berhampur in F.A. no.340 of 2005 of the Hon'ble High Court of Orissa. She has pleaded for rejection of the application for grant of probate.

4. In view of the aforesaid rival pleadings the following issues have been settled.

ISSUES

1. Is the suit maintainable ?
 2. Whether there is cause of action to file the suit ?
 3. Whether the plaintiffs are entitled for grant of probate of the Will ?
 4. To what relief (s) the plaintiffs are entitled ?
5. In order to prove the case, plaintiff no.1 examined himself as P.W.1 while P.W.2, Susanta Kumar Panigrahi is his younger brother, defendant no.4 and one of the attesting witnesses. On the other hand, the contesting defendant no.2 has not examined herself nor any other witness on her behalf.

Besides oral evidence the plaintiffs have produced and proved the Will dtd.19-08-1999 marked as Ext.1, the

death certificate of Kishore Chandra Panigrahi as Ext.2 and the legal heir certificate of Late Kishore Chandra Panigrahi marked as Ext.3. With the aforesaid evidence on record the issues are to be answered.

FINDINGS

6. **Issue No.3**

This is the only issue of the case which requires a clear finding of the Court. Ext.1 is the Will dtd.30-08-1999 said to have been executed by Kishore Chandra Panigrahi in respect of Schedule A property. Plaintiff no.1 as P.W.1 has proved the same. He has well corroborated the facts pleaded in the plaint. According to him, Ext.1 is the last Will of his father. After death of his father, Ext.1 was handed over to him by his brother then only he came to know about the Will, the contents of which were written by his father in his own hand. He has denied the fact and allegation that the property was purchased by him in the name of his father and that it was a gift. He has also proved the death certificate of his father (Ext.2) and legal heir certificate (Ext.3).

7. P.W.2 is defendant no.4 and the younger son of the testator and brother of P.W.1. He was also practising as an advocate under his father at the relevant time. According to him, his father executed Ext.1 on 30-08-1999 in his chamber in his presence being called by the father and his father asked him to sign on the Will being an attesting witness after his father himself signed the same in his presence. He signed on the Will after going

through the same. Sri Suresh Kumar Choudhury, the other attesting witness was also present at that time. His father was in sound state of mind and good health at the time of execution of the Will. His father was regularly going to Court and conducting cases at the relevant time and after his death the Will was discovered from his personal drawer. He has proved his signature on the Will as Ext.1/b and that of Suresh Kumar Choudhury as Ext.1/c. The said Suresh Kumar Choudhury is his first cousin being the son of his maternal uncle.

There is no evidence to the contrary.

8. On perusal of Ext.1 it is found that the same has been executed by testator Kishore Chandra Panigrahi in his own hand and he has signed on the same putting date which has been marked as Ext.1/a. The language of Ext.1 does not disclose any mental deficiency of the testator. He has bequeathed the schedule property which is house in Flat no.229, H.I.G at Kanan Vihar which was purchased from Mrs. Meena Singh. It is also described in the said document that the testator acquired the said property intending to shift to the said house but later he considered that the said house was not suitable for his requirement. He has declared his intention to bequeath the said property in favour of his son and daughter-in-law jointly who will become the absolute owners and enjoy the same in the manner they like and none of his legal heirs will have any right over the same. Ext.1 is independent of any

previous Wills and will stand on own merit. He has also reserved the right to revoke the Will if he would feel so.

9. In a case of the present nature the Court is required to examine if the document is a genuine one executed in a sound and disposable state of mind and free from suspicion. Though defendant no.2 has objected to grant of probate in her written statement but she has not come forward to contest the case. On the other hand, instead of challenging the document as not a genuine one nor executed by her father in a sound disposable state of mind, she has taken a plea that the property in question was purchased by plaintiff no.1 out of his ill got income but in the name of his father and the present proceeding has been started to regularise the same. Her aforesaid allegations not being substantiated by way of proof cannot be accepted by a Court of law as evidence. P.W.2 is the other son of the testator and an associate advocate under his father was present at the time of execution of Ext.1 along with Suresh Kumar Choudhury who is none other than the son of his maternal uncle. The testator was an advocate and he has and he himself had written the Will and executed the same in presence of attesting witnesses who are his own son and son of his brother-in-law. None of his legal heirs except defendant no.2 has questioned execution of the Will which has been prepared on the letter head of the testator. There is no material on record to cast doubt on the genuineness of the Will, Ext.1. There is also no material showing any suspicious circumstance under which the

same was prepared and executed. There is nothing to disbelieve Ext.1 to have been executed by testator Kishore Chandra Panigrahi in a state of sound and disposable mind. He has also reserved the right of revocation of the Will if he would so like but perhaps no such situation arose till his death.

10. Therefore, in view of the evidence available on record and the discussions in the foregoing paragraphs basing on the said evidence, this Court comes to a conclusion that Ext.1 is the last Will of Kishore Chandra Panigrahi who executed the same on 30-08-1999 in a sound disposable state of mind bequeathing the schedule A property in favour of the plaintiffs being his elder son and elder daughter-in-law and the plaintiffs are entitled to the relief of grant of probate of the Will, Ext.1. Thus this issue is answered in the affirmative and in favour of the plaintiffs.

11. **Issue No.1 & 2**

In view of the findings under issue no.3 it is held that the suit is maintainable and the plaintiffs being the legatees and the testator having died, they have cause of action to file the suit for grant of probate. Hence, both the issues are answered in the affirmative and in favour of the plaintiffs.

12. **Issue No.4**

The plaintiffs except grant of probate of the Will, Ext.1 have not prayed for any other relief or reliefs. Hence, considering the nature of the suit they are not entitled to any other relief or reliefs.

Hence, ordered.

ORDER

The suit be and the same for grant of probate of the Will dtd.30-08-1999 executed by Kishore Chandra Panigrahi, since deceased in favour of the plaintiffs is allowed on contest but under the circumstances without any cost. Letter of Probate be granted in favour of the probate petitioner.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

The judgment is typed to my dictation by the Typist attached to this Court directly on my Official Laptop provided under E-Court Project, corrected and pronounced by me in the open Court today on the 11th day of February, 2014 under my seal and signature.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS:

P.W. 1 : Prasanta Kumar Panigrahi

P.W.2: Susanta Kumar Panigrahi

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS MARKED AS EXHIBITS FOR THE PLAINTIFFS :

Ext.1 :Original Will executed by Late Kishore Chandra Panigrahi;

Ext.1/a: Signature of Kishore Chandra Panigrahi ;

Ext.1/b: Signature of P.W.2 Susanta Kumar Panigrahi ;

Ext.1/c: Signature of Suresh Kumar Choudhury;

Ext.2 : Death certificate of K.C. Panigrahi ;

Ext.3: Certified copy of legal heir certificate ;

LIST OF DOCUMENTS MARKED AS EXHIBITS FOR THE DEFENDANTS :

Nil

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

