

TESTAMENTARY SUIT No.1 OF 1986

**(In the matter of an application under Sections 273 and 278
of the Indian Succession Act, 1925.)**

Ashish Das Gupta :- Plaintiff
-Versus-
Smt. Bani Gupta & Ors.:- Defendants

**For the plaintiff :M/S L.N. Das, S.Dey and A.Sohan,
Advocates.**

**For The Defendants :Mr. Gautam Bose, Senior Advocate.
& Miss. Ratna Das, Advocate.**

P R E S E N T

THE HON'BLE MR. JUSTICE V.N. SINHA

V.N.Sinha,J.

The applicant/plaintiff, who is the nephew of the testatrix, Late Shovana Bhattacharya as also the sole beneficiary named under the Will dated 28.8.1968 of the testatrix, has filed this application under Sections 273 and 278 of the Indian Succession Act, 1925 (hereinafter referred to as "the Act") for grant of Letters of Administration to the estate of Late Shovana Bhattacharya under her Will dated 28.8.1968, whereunder the testatrix bequeathed her entire immovable properties situate at Mouza- Khurda Tundi Koorthi, Pargana Thana Chakai, P.S. Jhajha, District- Monghyr, (presently P.S. Simultala, District- Jamui), as detailed in Annexure-A to this application in favour of the applicant/plaintiff with further request that the Letters of Administration should have effect throughout the

territory of India.

2. It appears from perusal of the instant application/plaint filed in this Court on 25.11.1982 as also from the original Will dated 28.8.1968 (Exhibit-5) executed by Late Shovana Bhattacharya, who was an issueless divorcee and retired as Inspectress of School sometimes in the year 1946 that the properties bequeathed by the testatrix in favour of the applicant/plaintiff was her self acquired properties,. The applicant/plaintiff is the sole beneficiary under the Will dated 28.8.1968 and is the nephew of the testatrix. The testatrix was being looked after by the applicant's father with all sincerity and she had special affection for the applicant/plaintiff which persuaded her to bequeath the entire immovable properties in favour of the applicant/plaintiff. The testatrix executed her Will dated 28.8.1968 at the residence of her legal advisor Sri Shyam Narayan Sinha, Advocate, Civil Court, Patna. Sri Shyam Narayan Sinha drafted the Will as per the instructions given by the testatrix. The draft Will was typed by Sri Ram Surith Singh, Typist, Civil Court, Patna. The aforesaid Will dated 28.8.1968 was duly executed by the testatrix in presence of two attesting witnesses, namely, Sri Shyam Narayan Sinha, Advocate and Sri Anath Bandhav Ghosh, who put their respective signatures over the Will dated 28.8.1968 at the request of the testatrix. The aforesaid Will dated 28.8.1968 was executed by the testatrix with stipulation that the Will be kept with her legal advisor Sri Shyam Narayan Sinha, Advocate until the sole beneficiary named under the Will attains the age of 25 years i.e. 28.8.1982 or completes his education, whichever is earlier. In the event, sole beneficiary dies

before attaining the age of 25 years or does not become a graduate, the property will vest in Smt. Sikha Das Gupta, the mother of applicant/plaintiff. No sooner the sole beneficiary named under the Will attains the specified age or completes his education whichever is earlier, the custodian of the Will Sri Shyam Narayan Sinha will inform the applicant about the Will and hand over the same to him. Until the Will dated 28.8.1968 is handed over to the applicant, the subject matter of the Will shall be looked after by the father of the applicant/plaintiff. The custodian of the Will Sri Shyam Narayan Sinha, Advocate gave notice about the execution of the Will to the applicant/plaintiff vide his registered letter dated 27.8.1982, Exhibit-2, on receipt of which, the applicant went to the residence of Sri Shyam Narayan Sinha on 1.9.1982 alongwith Sri Chandrika Prasad Rai, P.W.-6 to collect the aforesaid Will. Thereafter the applicant filed the present application on 25.11.1982 for grant of Letters of Administration in respect of the Estate of Late Shovana Bhattacharya as bequeathed under the Will dated 28.8.1968, with verification of Sri Shyam Narayan Sinha, Advocate and the affidavit of Sri Shyam Narayan Sinha as attesting witness was also annexed with the application.

3. In terms of different provisions of the Act, General Citation was published in two local daily newspapers, namely, Searchlight and Pradeep, both Patna Edition on 4.12.1983. Two near relatives of the testatrix were also noticed by this Court and service on both of them was deemed to be validly effected under orders dated 20.1.1984. Initially none appeared in the proceedings to object the

grant of Letters of Administration in favour of the applicant/plaintiff but at later stage, caveat was filed on behalf of Smt. Bani Gupta and others on 21.8.1985 as a result of which the present proceedings was converted under order dated 11.2.1986 into Testamentary Suit No. 1 of 1986. Both the parties keenly contested the matter and adduced oral and documentary evidences until 17.4.2008 on which date both the parties jointly filed an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 praying inter alia that the dispute in the instant suit has since been resolved between the parties outside the court and the affidavit resolving the dispute has been affirmed by both the plaintiff and the defendants on 17.4.2008. The plaintiff and the defendants also appeared before this Court on 17.4.2008 and admitted before this Court about the resolution of their dispute on payment of Rs. 1,21,667/- by the plaintiff to the defendants by way of two demand drafts dated 26.3.2008 drawn on the S.B.I., Service Branch, New Delhi In view of the resolution of their dispute outside the Court, the defendants have no objection if Letters of Administration in respect of the Estate of Late Shovana Bhattacharya under her will dated 28.8.1968 is granted in favour of the applicant/plaintiff. The defendants also submitted that they do not wish to proceed in Title Suit No. 43/1983 pending before the Sub-Judge, Jamui so that all the litigations between the parties come to an end. The compromise between the parties was accepted by this Court as would appear from the order dated 17.4.2008 whereunder defendant nos. 1 and 2 were discharged from further appearance in these proceedings.

4. In support of the prayer made in this application/plaint,

the applicant/plaintiff examined altogether six witnesses including himself as P.W.-3. The two attesting witnesses of the Will could not be examined as witness in these proceedings as attesting witness no.-1, Sri Shyam Narayan Sinha, Advocate left for his heavenly abode on 18.2.1983 after filing of the present case and the other attesting witness Sri Anath Bhandhab Ghosh died on 20.4.1978 prior to filing of this case.

5. Sri Ram Nandan Prasad, Clerk, Civil Court Bar Library, Patna was examined as P.W.-1. He recognized the writing and signature of Sri Shyam Narayan Sinha over the envelope and registered letter dated 27.8.1982 addressed to the applicant/plaintiff giving notice about the execution of the Will as he was well acquainted with the writing and signature of Sri Shyam Narayan Sinha, Advocate. The envelope and the letter dated 27.8.1982 was marked as Exhibit- 1,1/a, 2 and 2/a respectively. The verification signed by Sri Shyam Narayan Sinha over page-8 of the plaint was also recognized by P.W.-1, which was marked as Exhibit-3.

6. Sri Alok Ghosh, son of Sri Anath Bandhav Ghosh, the other attesting witnesses over the Will dated 28.8.1968 was examined as P.W.-2. In his deposition P.W.-2 identified the signature of his father Sri Anath Bandhav Ghosh over the Will dated 28.8.1968 as attesting witness which was marked as Exhibit-4.

7. The applicant/plaintiff examined himself as P.W.-3. In his deposition the applicant/plaintiff stated that the testatrix was his aunt (father's sister) who executed her Will dated 28.8.1968 in favour of P.W.-3 as sole beneficiary. He further stated that he collected the

Will dated 28.8.1968 from Sri Shyam Narayan Sinha on 1.9.1982 after he received a notice from the custodian of the Will to collect the same whereafter he went to the residence of Sri Shyam Narayan Sinha with Sri Chandrika Prasad Rai, P.W.-6 and collected the Will. He identified the Will dated 28.8.1968 executed by the testatrix which was marked as Exhibit-5.

8. Sri Ram Surith Singh, Typist, Civil Court, Patna was examined as P.W.-4. He stated in his deposition that the Will dated 28.8.1968 was drafted by Sri Shyam Narayan Sinha at the instance of the testatrix and he typed the Will, Exhibit-5 at the request of the testatrix. After the Will was typed by P.W.-4, it was read by Sri Shyam Narayan Sinha as also by the testatrix, whereafter she put her signature over the Will at the residence of Sri Shyam Narayan Sinha in presence of P.W.-4. Sri Anath Bandhav Ghosh and Sri Shyam Narayan Sinha were requested by the testatrix to put their respective signatures over the Will as attesting witnesses in presence of P.W.-4. At the request of testatrix, Sri Anath Bandhav Ghosh and Sri Shyam Narayan Sinha put their signature over the Will dated 28.8.1968 as attesting witnesses. P.W.-4 also signed over the Will as Typist. P.W.-4 identified the signature of Sri Shyam Narayan Sinha as attesting witness as also his own signature as typist over the Will which was marked as Exhibits-6 and 7 respectively. At the time of execution of the Will, the testatrix was in perfect state of body and mind, and she executed the Will without any pressure or coercion.

9. Sri Bishwa Mohan Kumar Sinha was examined as P.W.-5 who happens to be the eldest son of one of the attesting witness Sri

Shyam Narayan Sinha. He identified the signature of his father Sri Shyam Narayan Sinha at Page-8 of the plaint which has already been marked as Exhibit-3. P.W.-5 also identified the signature of his father at page-11 of the plaint which was marked as Exhibit-8. He further stated in his deposition that the Will dated 28.8.1968 was handed over by his father to the applicant/plaintiff in his presence.

10. Sri Chandrika Prasad Rai was examined as P.W.-6 on behalf of the plaintiff. He stated that he had gone with the applicant/plaintiff to the residence of Sri Shyam Narayan Sinha on 1.9.1982 when applicant had gone there to collect the Will dated 28.8.1968.

11. Having perused the instant Testamentary Application/plaint, the original Will dated 28.8.1968, Exhibit-5, deposition of six plaintiff witnesses and the Compromise Petition dated 17.4.2008, I am satisfied that late Shovana Bhattacharya duly executed Will dated 28.8.1968 in presence of two attesting witnesses, namely, Sri Shyam Narayan Sinha and Sri Anath Bandhav Ghosh, which was her last Will and testament. The testatrix executed her last Will in a sound state of body and mind without any pressure or coercion. In the circumstances, prayer made in this application/plaint for grant of Letters of Administration in respect to the Estate of Late Shovna Bhattacharya under her Will dated 28.8.1968 in favour of the applicant/plaintiff is allowed.

12. Let the Letters of Administration annexing the copy of the Will dated 28.8.1968 executed by Late Shovana Bhattacharya be granted in favour of the applicant/plaintiff which shall have effect

throughout the territory of India.

13. As undertaken in paragraph-5 of the Compromise Petition dated 17.4.2008 the defendants are at liberty not to prosecute Title Suit No. 43 of 1983 pending before the Sub-Judge, Jamui which is accordingly dismissed.

(V.N.Sinha,J.)

**The Patna High Court, Patna.
Dated the 23 May, 2008.
P.K.P./N.A.F.R.**

