

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 6 of 2004**

Salvinder Singh, Son of Late Raj Pal Singh, resident of Plot no. 67A, Sitaramdera, New Layout, P.S.-Sitaramdera, Town -Jamshedpur, District- East Singhbhum.

.... Appellant

Versus

1. Amarjeet Kohli, W/o Late Mahinder Singh
2. Ajit Kohli
3. Pradeep Kohli
4. Kuldip Kohli

(Respondent nos. 2, 3 & 4 are all sons of Late Mahinder Singh)
(All are resident of New Sitaram Dera, 67A New Layout, P.O. Agrico, P.S. - Sitaramdera, Town- Jamshedpur, District -East Singhbhum.

.... Respondents

For the Appellant : Mr. D.K. Karmakar, Advocate

: Mr. S.K. Ughal, Advocate

For the Respondents : Dr. J.P. Gupta, Advocate

: Mr. Ashutosh Anand, Advocate

: Mrs. Mohini Gupta, Advocate

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. The petitioner-applicant in the learned court below has filed this appeal being aggrieved by the order dated 24.12.2003 passed by the District Judge, East Singhbhum, Jamshedpur in Revocation of Probate Case No. 39 of 2001 whereby and whereunder the learned court below dismissed the petition for revocation of the probate of the will.

3. The case of the applicant-appellant in brief is that the applicant is one of the seven sons of Late Rajpal Singh who died on 20.04.1987 in Tata Memorial Hospital, Jamshedpur leaving behind his seven sons, three daughters and his widow. Out of the said legal

heirs and successors of Rajpal Singh, his widow namely Raj Rani died on 13.10.1998 and one of the son of Late Rajpal Singh namely Kalbir Singh died on 04.11.2000 leaving behind his wife and one minor daughter. The applicant filed Title Partition Suit No. 40 of 1996 inter alia against the sole opposite party of the Revocation of Probate Case No. 39 of 2001 namely Mahinder Singh. In the said Title Suit No. 40 of 1996, the defendant Mahinder Singh pleaded that Rajpal Singh executed a will dated 21.05.1985 in favour of his five sons and also pleaded that the probate of the will has been granted. Thus the applicant-appellant came to know about probate of the will has been granted by Sub-Judge-I, Jamshedpur vide Probate Case No. 59 of 1987. It is the specific case of the applicant-appellant that the deceased did not execute the said will on the alleged date or any other date, the probate of which has been granted by the impugned order and that the said will is a forged and fabricated document and the opposite party has been granted probate of the will consequent upon practicing fraud, suppressing facts, concealing the truth and misrepresentation before the Court. Hence, the applicant-appellant made a prayer for revoking the said probate of will by the court below. In his written show cause, the opposite party of the revocation case no. 39 of 2001 besides the usual defence pleaded that the applicant has the knowledge about the will executed by Late Rajpal Singh dated 21.05.1985 and also about the grant of probate of the said will and all the members of the family including the applicant-appellant knew about the same.

The applicant-appellant was never living with his deceased father neither during the last days of his father nor did the applicant-appellant perform the last rites of the deceased father and the opposite party -respondents performed the last rites of their father. The opposite party-respondents denied that the will in respect of which probate has been granted is either forged or fabricated and accepted that the same is a genuine document having been executed by his deceased father Rajpal Singh with full consciousness. It has also been pleaded that no suppression of fact was ever made by the opposite party-respondents nor any fraud was practiced in obtaining the said probate. A notice in respect of the probate of the said will was published in the newspaper Uditbani dated 22.09.1987.

4. In support of its case, the applicant examined himself as the sole witness. The applicant as A.W.1 has inter alia stated about the death of his father and his filing a suit for partition of the property. He has further stated that on the written statement being filed in the said Title Partition Suit, the applicant-appellant could know about the Probate Case No. 59 of 1987 in the year 2000. His father never executed any will. He has not received any notice in the probate case. In his cross-examination he has stated that the probate case was instituted in respect of the self-acquired property of his father. On being confronted, he admitted executing a deed of relinquishment which was marked as Ext. A. He also stated that no notice was published in the Probate Case.

5. On the other hand, from the side of the opposite party-respondents, three witnesses were examined. O.P.W.1-Mahinder Singh is the opposite party-respondent. He has inter alia stated about execution of the will by his father and the same having been registered. Since the applicant was provided a job by his father in TISCO, hence his father did not allocate any property to the applicant in the said will. A notice of the probate case was published in the newspaper 'Uditbani'. In his cross-examination he denied the suggestion that his father did not execute any will. O.P.W.2 -Yogender Singh is another son of Rajpal Singh. He has inter alia stated that the applicant was aware about filing of the petition for grant of probate will of his father. In his cross-examination he has stated that he received notice of the probate case. O.P.W. No. 2 was not cross-examined in any manner regarding his statement that the applicant was aware about the filing of the petition for grant of the probate. O.P.W.3-Ganesh Lal Kohli is the uncle to the parties of the case. He is an attesting witness to the will. On being proved by him, his signature on the will was marked as Exhibits C, C/1 & C/2. A notice regarding probate of the will was published in the newspaper. In his cross-examination, he has stated that he cannot say on which day the notice was published in the newspaper.

6. Learned court below after considering the evidences, both oral and documentary, observed that though the prayer for revocation of probate of the will has been made on the ground that the will was

forged but there is absolutely no evidence put forth by the applicant to the effect that the will was forged and though it was submitted at the hearing on behalf of the applicant-appellant that the name of the applicant was not cited in the application of probate but the same was not pleaded in his petition but still the learned court below considered the fact that the appellant having been admitted to have relinquished his right over the property involved in the will by executing a registered deed of relinquishment in the office of Sub-Registrar, the fact that the name of the applicant was not cited in the application of probate is not fatal and dismissed the suit.

7. Mr. S.K. Ughal the learned counsel for the appellant submits that the learned court below failed to appreciate the evidence in the record in its proper perspective and the learned court below failed to take into consideration the fact that the appellant-applicant has executed the deed of relinquishment in respect of his rights at the time when his father was alive but the rights accrued to the appellant-applicant after the death of his father cannot be held to be relinquished by his said deed of relinquishment executed by the appellant-applicant. It is further submitted that the learned court below could not properly appreciate the provision of Section 263 (A) of the Indian Succession Act and hence, it is submitted that the impugned judgment be set aside and the probate of the will granted by revoked.

8. Mr. Ashutosh Anand the learned counsel for the respondents on the other hand defended the impugned judgment and

submitted that the appellant has not whispered even a single word about his sole ground of the revocation of probate of the will that the will is fraud and fabricated and he having not agitated any other ground for revocation of probate of the will, in the absence of any evidence, in respect of his sole ground for revocation of probate of the will, the learned court below has rightly dismissed the petition for revocation of probate of the will and it is further submitted that there is no illegality passed by the learned court below in the impugned judgment. Hence, it is submitted that this appeal being without any merit be dismissed.

9. Having heard the rival contention made at the Bar and after going through the record, the only point for determination in this appeal is;

"Whether the learned court below is right in rejecting the petition for revocation of probate of the will?"

10. I find that as rightly held by the learned court below though the revocation of probate of the will was sought on the ground that the same was forged and fabricated yet there is no pleading as to in what manner the same is forged or fabricated nor there is any evidence in any manner in the record either oral or documentary to suggest the will is a fabricated one. So far as the contention of the appellant-applicant that the name of the appellant-applicant was not cited in the application filed for the probate of the will granted is concerned, it is a settled principle of law that the grant of probate may be revoked or annulled for any just cause and the explanation to

Section 263 of Indian Succession Act indicates the circumstances in which Court can come to the conclusion that the just cause has been made out. It will be profitable to refer to section 263 of the Indian Successions Act, 1925 which reads as follows:-

263. Revocation or annulment for just cause.—*The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation.—Just cause shall be deemed to exist where—

(a) *the proceedings to obtain the grant were defective in substance; or*

(b) *the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or*

(c) *the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*

(d) *the grant has become useless and inoperative through circumstances; or*

(e) *the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.*

Illustrations

(i) *The Court by which the grant was made had no jurisdiction.*

(ii) *The grant was made without citing parties who ought to have been cited.*

(iii) *The will of which probate was obtained was forged or revoked.*

(iv) *A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*

(v) *A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.*

(vi) *Since probate was granted, a later will has been discovered.*

(vii) *Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.*

(viii) *The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.* (Emphasis Supplied)

11. The plain reading of section 263 of the Indian Succession Act, 1925 makes it clear that “Defective in substance” occurring in clause (a) to the Explanation to Section 263 must mean that the defect was of such a character as to substantially affect the regularity and

correctness of the previous proceedings. Whether the proceeding to obtain the grant of probate in a particular case, "defective in substance" would obviously depend on the individual cases and on the particular circumstances existing in each case. The omission to issue citation to a person who could have been apprised of the proceedings for the grant of probate may in a normal case be a ground by itself for revocation of the grant of probate, but it is not absolute right irrespective of other considerations arising from the proved facts of a case. Therefore, whether the omission to issue citation to a person on the facts of a particular case, would be a "just cause" will depend on the facts and circumstances of each case. Certainly, the term "Explanation" used in Section 263 of the Indian Succession Act is imperative in character and say that "just cause" shall be deemed to exist, amongst other things, when the proceedings to obtain the grant of probate were defective in substance. Illustration (ii) of Section 263 of the Indian Succession Act, 1925 is merely an instance of the practical application of the Explanation.

12. In this backdrop, keeping in view the undisputed facts that the appellant-applicant is the own brother of the opposite party-respondents and that he has categorically mentioned in the deed of relinquishment which was duly registered in the office of Sub-Registrar mentioning therein that he relinquishes all his rights in respect of the property described in the Schedule 'A' of the said deed of relinquishment and the fact that for the same property, the will has been executed by the father of both the parties to this case and the

father of both the parties of the case was the second party of the said deed of relinquishment executed by the appellant, the omission to issue citation to the appellant in the facts of this case, would in my considered opinion will not amount to a "just cause" as envisaged in Section 263 of the Indian Succession Act, 1925. Hence, certainly not citing the name of the appellant-applicant in the application for grant of probate of the will is not a valid ground in itself in this case for revocation of probate of the will, more so, because the testimony of the O.P.W.2 as already indicated above, that the appellant-applicant was very much aware about the probate proceeding, has remained unchallenged in his cross-examination and hence, it is to be accepted as a fact. Thus, in the facts and circumstances of the case I have no hesitation in holding that the learned court below has rightly dismissed the petition for revocation of probate of the will. The sole point for determination is answered accordingly. Accordingly the impugned judgment dated 24.12.2003 passed by the District Judge, East Singhbhum, Jamshedpur in Revocation of Probate Case No. 39 of 2001 is confirmed and this appeal being without any merit be dismissed but in the circumstances without any costs.

13. Let the Lower Court Records be sent back to the court below along with a copy of this Judgment forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
 Dated the 31st August, 2018
 AFR/ Sonu-Gunjan/-