

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1225 of 2016

1. Saurabh Kumar Son of Upendra Kumar Shahi, Resident of Village Kodihara, Police Station Khijar Sarai and District Gaya Presently residing at Mohalla Katari Hill Road, Bhagirath Bhawan, Saketpuri, Gaya.
2. Ankit Kumar Son of Upendra Kumar Shahi, Resident of Village Kodihara, Police Station Khijar Sarai and District Gaya Presently residing at Mohalla Katari Hill Road, Bhagirath Bhawan, Saketpuri, Gaya.

... .. Appellant/s

Versus

Gayatri Devi, Wife of Sri Niranjana Singh, D/o of late Dr. Ramchandra Prasad Singh, Resident of Village Mahmadpur, P.O. Vansh Gopal, Amba, P.S. Sirdala, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate. Mr. Mrigendra Kumar, Advocate.
For the Respondent/s	:	Mr. Mayank Bilochan, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 21-08-2025

Heard both the parties.

2. This Miscellaneous appeal has been filed under Section 299 of The Indian Succession Act, 1925 for setting aside the judgment/order dated 20.08.2016 passed by learned District Judge, Gaya in Probate Case No. 56 of 2015 wherein he has dismissed the application of the appellants/applicants for grant of probate.

3. The case of appellants/applicants' in brief is that Dr. Ramchandra Prasad Singh (the testator), son of late Bhagirath Prasad Singh, was an eminent doctor who settled in London, U.K., in 1965 and resided there till his death on 24.11.2014. His



wife predeceased him, and he left behind only one married daughter namely Gayatri Devi (respondent/opposite party), settled at her matrimonial home in Village Mahmatpur, District Nawada. Out of his personal income, the testator purchased the Schedule-1 property by a registered sale deed dated 29.03.1972 from Bibi Rabiya Khatoon and constructed a house thereon. He was the full brother of late Babu Ramanuj Singh, grandfather of the appellants/applicants. The appellants/applicants, during their minority, were brought up and educated in the said house, which was provided for the residence of their father. In October 1992, during a visit to Gaya, the testator, being of sound mind and free from coercion, executed a unregistered Will on 22.10.1992 bequeathing the Schedule-1 property to the appellants/applicants, in the presence of attesting witnesses namely Ramanuj Singh and Rakesh Kumar (AW-2). The original Will is in the custody of the appellants/applicants, who are also named as joint executors. The testator died at his residence in the U.K., where he was cremated, with subsequent religious rites performed at Gaya. Proof of death has been filed. The appellants/applicants claim possession of the property after his death and seek probate of the Will dated 22.10.1992 in favour of appellants jointly with respect to Schedule-I of the petition thereafter filed Probate Case No. 56 of 2015 under Section 276 of the Indian Succession Act, 1925 for



grant of probate. The citation was issued and served on the deceased and general public.

4. Respondent Gayatri Devi who is sole daughter/ legal heir of the testator filed her written statement and supported the case of the appellants and further stated that O.P. has no objection in grant of probate to the appellants/applicants.

5. In support of the probate case, the appellants/applicants have examined altogether four witnesses and the respondent has examined two witnesses. *In toto* six witnesses were examined who supported the probate case filed by the appellants/applicants.

Applicant Witness	Names
AW-1	Upendra Kumar Shahi
AW-2	Rakesh Kumar
AW-3	Ankit Kumar
AW-4	Saurabh Kumar

Opposite Party Witness	Names
OPW-1	Gayatri Devi
OPW-2	Manish Kumar

6. Following documentary evidence were produced and exhibited.

Exhibits	Documents
Ext-1	Original Will
Ext-1/A	Signature of Rakesh Kumar on Will
Ext-1/B	Signature of Ram Anuj Singh on Will
Ext-2	Registered sale deed dated 29.03.1992 in favour of Ram Chandra Prasad Singh by Bibi Rabiya Khatoon



Mark 'X' Death certificate showing death of Dr. Ram Chandra Prasad Singh on 24.11.2014

Ext-A Certificate of Gayatri Devi (Respondent/ daughter of Ram Chandra Prasad Singh) issued by Anugrah Narayan Middle School, Gaya.

7. The learned Trial Court on the basis of the aforesaid oral and documentary evidence on record came to conclusion that the applicants/appellants have failed to prove the death of the deceased Dr. Ramchandra Prasad Singh. Furthermore, it was concluded that, Gayatri Devi (O.P.) although supported and corroborated the case of the applicants/appellant but she has not filed certificate of matriculation or intermediate to show that she is daughter of the deceased Dr. Ramchandra Pd. Singh on these grounds the learned Trial Court rejected the probate case.

8. Learned Counsel appearing on behalf of the appellant has submitted that the learned Trial Court committed an error to conclude that the applicants/appellants have not proved the death of Dr. Ramchandra Prasad Singh. It is submitted that despite the fact that OPW No.1, Gayatri Devi, and OPW No.2, Manish Kumar, supported the case of the appellants/applicants, the learned Trial Court failed to properly appreciate their depositions. Moreover, the learned Trial Court failed to appreciate the fact that the OPW No. 1, Gayatri Devi is daughter



of the deceased Dr. Ramchandra Prasad and had not consider the documentary evidence adduced by her.

9. Learned counsel for the respondent submitted that Respondent/ O.P. who is sole daughter of testator has supported and corroborated the case of appellants and she has no objection in grant of probate in favour of appellants.

10. At this stage, I would like to appreciate the relevant extract of entire evidence led by the parties before the learned Trial Court.

11. AW-1, Upendra Kumar Shahi who is father of the appellants/applicants, has deposed that the testator (Dr. Ramchandra Prasad Singh) was his uncle and after his medical degree he shifted to London (England) for work and spent the rest of his life there. The wife of Dr. Ramchandra Prasad Singh died leaving behind their daughter Gayatri Devi (respondent). He further deposed that Dr. Ramchandra Prasad Singh purchased 6 *kattha* of residential land on 29.03.1972 through registered sale deed bearing *khata* no.27, plot no. 41, holding no. 1878/02 in *Mohalla*- Alamgirpur, Gaya wherein he constructed a residential house. He was fond of both the appellants/applicants (sons of AW-1) and he was worried about their education and upbringing. For better education and a wholesome development of both the applicants/ appellants Dr. Ramchandra Prasad Singh had



permitted them to reside in the aforesaid house where they continued staying till his death and he used to express his wish to give the aforesaid land and building to the appellants to which his daughter Gayatri Devi had also agreed. Further more he deposed that when Dr. Ramchandra Prasad Singh came to India in October, 1992 he called his brother (father of AW-1) and relative Rakesh Kumar and on 22.10.1992 he on his own accord and free Will executed a Will in presence of above two witnesses bequeathing his house along with land at Gaya to appellants. Since they were minor in 1992. He handed over the Will to AW-1 and asked to hand it over to appellants after his death. Dr. Ramchandra Prasad Singh died on 24.11.2014 in England where no family members were present but his rites were performed by sons of AW-1 at Gaya. Thereafter, AW-1 handed over the Will dated 22.10.1992 to his sons/appellants. He further stated that this probate case is true.

12. AW-2, Rakesh Kumar is relative of the testator and the appellants/applicants and he has also supported the probate case brought by the appellants. He has deposed that Gayatri Devi is the daughter of Dr. Ramchandra Prasad Singh and he married her in an affluent family, thereafter he started living in England. He further deposed that Dr. Ramchandra Prasad Singh often used to discuss with his daughter, brother and



well-wishers that he was willing to give the house at *Mohalla-Alamgirpur Katari Hill Road, Gaya* to the applicants/appellants. On 22.10.1992 Dr. Ramchandra Prasad Singh, in presence of AW-2, his brother Ramanuj Singh, and the father of the applicants/appellants (AW-1) typed and executed a Will in favour of the applicants Saurabh Kumar and Ankit Kumar with his free will and being fully satisfied marked his signature on each page of the Will. It has further been deposed that he along with the brother of Dr. Ramchandra Prasad Singh namely Ramanuj Singh signed as witnesses on the aforesaid Will. Since the applicants/appellants were minors, the Will was handed over to Upendra Kumar Shahi with the instruction to hand over the original documents to the applicants after the death of Dr. Ramchandra Prasad Singh. On 24.11.2014 Dr. Ramchandra Prasad Singh died in England and his last rites were performed there itself, but his *Shradh* was performed in Gaya by the applicants. He deposed that he recognizes the signature marked by Dr. Ramchandra Prasad Singh as he was witness to it.

13. AW-3 and AW-4, Ankit Kumar and Saurabh Kumar, respectively are the applicants themselves in whose favour Dr. Ramchandra Prasad Singh executed the Will dated 22.10.1992. Both of them have supported the versions of AW-1 and AW-2 and deposed that he and his brother (Saurabh Kumar)



are full owners of the said property bequeathed to them by Dr. Ramchandra Prasad Singh through Will dated 22.10.1992 and there is no legal complexity or hurdle in the aforesaid property, therefore probate may be granted to them.

14. OPW-1, Gayatri Devi is the sole daughter of the testator Dr. Ramchandra Prasad Singh. She deposed that her education was all done living with her uncle Ramanuj Singh in a joint family. She used to study in *Anugrah Kanya Vidyalaya*. She further deposed that she was married at a young age and left her education. She further deposed that her father purchased a land from his independent income at *Mohalla-* Alamgirpur, Katari, Ward no.9, Gaya wherein he constructed a residential house and he executed the Will dated 22.10.1992 in favour of the applicants/appellants which was in her knowledge and she does not has any objection on probate in favour of the applicants/appellants. Moreover, her father, Dr. Ramchandra Prasad Singh died on 24.11.2014 in England and she, being the sole heir of her father, does not have any objection on the Will dated 22.10.1992.

15. OPW-2, Manish Kumar, who is the son of OPW-1 has deposed that his maternal grandfather died in England and his mother (OPW-1) is the only heir of Dr. Ramchandra Prasad Singh. He further deposed that the property



situated in Mauja- Rampur, Ward no.9 old, Mohalla- Alamgirpur, Gaya was given to the applicants/appellants through Will of which his mother had knowledge. The applicants/appellants have right over the aforesaid property after the death of his maternal grandfather on 24.11.2014.

16. Now, I shall deal with what are the true legal position in matter of proof of Will. In the case of **H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.** reported in **AIR 1959 SC 443**, which has been treated as the *locus classicus* on the subject, the Hon'ble Supreme Court observed as under:

“The party propounding a Will or other wise making a claim under a Will is no doubt seeking to prove a document and, in deciding how it is to be proved, reference must inevitably be made to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under S.67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the persons concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Thus the question



as to whether the Will set up by the propounder is proved to be the last Will of the testator has to be decided in the light of these provisions. It would prima facie be true to say that the Will has to be proved like any other document except as to the special requirements of attestation prescribed by S.63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of Wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

However, there is one important feature which distinguishes Will from other documents. Unlike other documents the Will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his Will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of the departed testator. Even so, in dealing with the proof of Wills the court Will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free Will. Ordinarily when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus of the propounder can be taken to be discharged on proof of the essential facts just indicated.”

17. This Court in *Vikas Singh & Ors. v. Devesh*



Pratap Singh reported in **2001 SCC OnLine Pat 75** on the point of proof in testimony case relied and quoted the passage from the decision in the case of **Surendra Pal v. Dr. (Mrs.) Saraswati Arora** reported in **(1974) 2 SCC 600** relating to burden of proof in probate proceeding is as under:-

“The propounder has to show that the Will was signed by the testator, that he was at the relevant time in sound disposing state of mind, that he had understood the nature of disposition, that he put his signature to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which is placed on the propounder is discharged.”

18. It can be concluded that Court has to consider following points:

- i.** Whether the testator had signed the Will?
- ii.** Whether he understood the nature and effect of the dispositions contained therein? and
- iii.** Whether he affixed his signature to the Will with full knowledge of its contents?

Broadly stated, the determination of these aspects governs the finding as to the due proof of a Will. It is now well settled that a Will, like any other document, is required to be proved in accordance with law, subject however to the special requirements of attestation as mandated under Section 63 of the



Indian Succession Act, 1925. In such proof, mathematical certainty cannot be insisted upon; rather, the test to be applied is whether the evidence on record satisfies a prudent mind as to the genuineness of the Will.

19. On perusal of the impugned judgment it appears that the learned Trial Court had not considered the settled principle of law that proof of death is not confined to the production of a death certificate alone. Under Section 108 of the Indian Evidence Act, a presumption of death arises where a person has not been heard of for a period of seven years by those who would naturally have heard of him. Apart from this statutory presumption, Sections 59 and 60 of the Indian Evidence Act also recognize oral testimony as admissible evidence in regard to facts relating to the last illness, cremation or burial of the deceased. Therefore, the evidence of witnesses acquainted with the deceased, who had personal knowledge of his death or cremation, carries evidentiary value and cannot be brushed aside merely for want of a formal certificate. The law does not mandate that a death certificate is the sole or exclusive mode of proving death. What is required is credible evidence which, upon consideration, satisfies the conscience of the Court that the death has indeed occurred. Thus, in view of the aforesaid legal position, it would be incorrect to hold that the death of Dr.



Ramchandra Prasad Singh has not been proved, unless credible evidence to the contrary is placed before the Court.

20. It is well settled law that in probate case, the main issue is proof of due execution and validity of the Will, not strict proof of death by official certificate if death is otherwise established through oral evidence or surrounding circumstances. The Trial Court in probate proceedings must emphasize that probate proceedings are not adversarial in the strict sense as in ordinary civil suits, rather proceedings are in the nature of a solemn enquiry where the Court's primary duty is to satisfy its judicial conscience regarding the genuineness and due execution of the Will. The Judge must be reasonably satisfied that the Will is genuine and validly executed and the proceeding is essentially in the nature of a "satisfaction of conscience of the Court". Moreover, the court must not stick on hyper-technicalities or insistence on strict proof of facts in the same manner as in contentious civil litigation should not defeat the very object of probate jurisdiction. The burden of proof lies initially on the propounder of the Will, but once *prima facie* proof of execution and attestation is given, the Court must consider surrounding circumstances, conduct of parties, and probabilities to arrive at its satisfaction. Thus, the oral and circumstantial evidence establishes the death of the testator and supports the case of the



propounder, the Court should not reject the probate petition. The Trial Court erred while considering the evidence available on record, and had not applied the law while considering the probate case.

21. In the instant case, there is no objection or dispute with regard to the genuineness of signature of the testator on the Will. It is also not in dispute that execution of Will was voluntary without any fraud, coercion, undue influences or the like. There is no such pleading on record by any Objector. The law is well settled that even if such case had been pleaded by the Objector, the burden of proof would have been upon him to establish the same. The applicants who were minor at the time execution of Will did not apparently play any role in the execution of the Will. The Will was handed over to AW-1 with direction to hand over the same to applicants after death of testator. The sole daughter of the testator has already supported the case of appellants and she stated that she had knowledge with the execution of Will and she has no objection for grant of probate in favour of appellants.

22. It is evident from the record that the O.P. No.1, Gayatri Devi has supported the case of the applicants/appellants and stated in her evidence by way of affidavit that she was married in childhood and her study was left. She also filed an



affidavit that she is non-matriculate. She has produced the certificate issued by her school where she studied and in the certificate (Ext.A) it is categorically certified that Gayatri Devi daughter of Shri Ram Chandra Prasad Singh had taken admission in school on 21.01.1974 and her date of birth is recorded as 09.01.1964. In such situation the law relating to probate emphasizes substantial justice over technical deficiencies, and Courts have consistently held that hyper-technical objections cannot be permitted to frustrate the true intent of the testator. The testimony of an interested witness, such as O.P. No. 1, Gayatri Devi who claims to be the daughter of the deceased is supported by reliable, oral and documentary evidence which cannot be discarded. Section 118 of the Indian Evidence Act recognizes the competency of all persons to testify, irrespective of their personal interest, so long as their testimony is found to be credible and trustworthy upon judicial scrutiny.

23. The appellants have proved the Will, its due execution, in a sound state of mind by the testator, in any absence of any suspicious circumstances surrounding the execution, the appellants must be held entitled to grant of probate.

24. Accordingly, this appeal is allowed.

25. The impugned Judgment and order dated 20.08.2016 of the Learned Trial Court is set aside and the



application for grant of probate is allowed.

26. Accordingly, the Learned Trial Court is directed to grant the probate of Will in favour of appellants.

27. Let the Trial Court Record be returned to the court concerned forthwith.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	07.08.2025
Uploading Date	21.08.2025
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