

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Probate Case No. 01 of 2012

Biren Poddar, son of Late Gulraj Poddar, resident of
Belair Apartment, Main Road, Town-Ranchi, P.S.-
Hindpiri, P.O.-Ranchi, District-Ranchi.

..... ... Petitioner

Versus

General People of Locality of Hindpiri, P.O.-G.P.O.
Ranchi, P.S.-Hindpiri, District-Ranchi.

..... ... Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Rohitasya Roy, Advocate.
: Mr. Anupam Anand, Advocate.
For the O.Ps. : Mr. Vikas Pandey, Advocate.

31/ 13.06.2025 Heard Mr. Rohitasya Roy, learned counsel appearing for the
petitioner and Mr. Vikas Pandey, learned counsel appearing for the legal
heirs and representatives of the testator.

2. By order dated 20.04.2018, the direction was issued for
citation to the general public at large to be posted at conspicuous places
in the District of Ranchi and at New Delhi in the concerned district
where properties are situated and also in the district of Sikar, Rajasthan,
specifically at such public places in the locality within which the
immovable property of the Testator lies. It was further ordered that the
citation be also fixed in some conspicuous part of the Court House and
also in the office of Collectors of the Districts. It was also directed that
the citation be also published through paper publication in two national
editions. Special citation be also issued in the name of the persons
mentioned in para 10 of the instant petition in terms of Section 283 (1)
(c) of the Indian Succession Act, 1925 calling upon them to come and

see the proceedings before grant of Probate. Pursuant to that Mr. Vikas Pandey, learned counsel has put his appearance on behalf of the persons whose names have been disclosed in para-10 of the present probate case.

3. Thereafter the office has submitted a long report in compliance of the said report. It transpires from the order dated 04.10.2018 that citation on some of the parties was not received and in view of that further fresh steps for service of citation upon O.P. No. 4 and 7 has been directed to be made in terms of the earlier order. Thereafter the further report has been submitted by the office and it has been recorded in the order dated 22.11.2018 that on the submission of learned counsel appearing for the petitioner that the service report of the general citation from Rajasthan and special citation on O.P. Nos. 4 and 7 have not yet been received, however, the affidavit showing the paper publication has already been filed and on that day, the matter was adjourned awaiting the service report.

4. From the order dated 20.12.2018, it transpires that the citation has returned unserved as per report of the District and Sessions Judge, Kamrup (M), Guwahati and the matter was adjourned for taking fresh instruction whether the O.P. No. 7 has changed her address or not. The notice upon O.P. Nos. 4 and 7 have been returned unserved and in view of that by order dated 15.03.2019, direction was issued for fresh steps for service of notice upon O.P. Nos. 4 and 7 and the matter was adjourned for four weeks awaiting the service report. Thereafter Mr. Vikas Pandey, learned counsel has filed the vakalatnama on behalf of O.P. Nos. 4 and 7, as disclosed in para-10 of the probate case. Finally in

the order dated 28.02.2020, it has been recorded that the pasting of citation at conspicuous places in the district of Delhi, has been received from the In-charge, Nazarat Branch (South), Saket Court, New Delhi and considering that the notice upon the others have been completed and this probate case was admitted on the same day i.e. on 28.02.2020. Issue was framed on 13.05.2022 and thereafter the witnesses have been examined and cross-examined on 07.12.2022.

5. This case has been filed under Section 276 read with Section 300 of the Indian Succession Act, 1925 for grant of probate against the last Will of the testament dated 07.04.2008.

6. Mr. Rohitasya Roy, learned counsel appearing for the petitioner submits that Sitaram Lohia died at Ranchi on 21.04.2008 leaving behind a duly executed Will and testimony dated 07.04.2008, whereby and whereof, he appointed Late Binod Poddar and Mr. Biren Poddar [petitioner herein] as executor and in view of that Binod Poddar presented the present probate case and during the pendency of present probate case, said Binod Poddar has left for his heavenly abode and thereafter Mr. Biren Poddar has been substituted in his place in light of the testimony dated 07.04.2008. He further submits that the testator executed the Will by putting his left thumb impression on the Will which was duly attested by Sri Hari Narayan Singh and Sri Madan Dubey. He then submits that the deceased Sitaram Lohia died leaving behind the properties within the jurisdiction of this Court as also within the jurisdiction of Laxmangarh, District Sikar in the State of Rajasthan and in New Delhi and in view of that this case has been filed before this court. He submits that the value of the properties has been disclosed in

para-8 of the present probate case to the tune of Rs. 3,13,00,000/- and the petitioner has already deposited Rs. 30,000/- being the maximum stamp duty by treasury challan to obtain the probate, which is on the record. He further submits that the testator died leaving behind the legal heirs and representatives, as disclosed in para-10 of the present probate case. He then submits that by the said Will, the testator has made the following bequeaths in favour of the persons, which has been disclosed in para-11 of the present probate case, which is as under:-

“(i) Half share of undivided, indivisible and impartable right, title and interest in the first floor flat comprising of three bedrooms with attached bathrooms drawing cum dining room, family lobby, kitchen, store, one car parking in ground floor, one servant quarter, a terrace with common W.C. and both along with variable right, title and interest in the land measuring 200 sq. yards. At P-95, NDSE, Part-II, New Delhi to Smt. Alka Lohia, daughter in law being wife of Sanjay Lohia, who is the son of the testator.

(ii) R.S. Plot no. 916, Khata no. 58, khewat no. 2, Thana no. 175, P.S. Tatisilwai, Village Haratu, District Ranchi, area about 3.14 acres along with godown to Samir Lohia, son of Sushil Lohia.

(iii) Flat no. 401, on the 4th Floor of Radium Court along with one car parking space situated on M.S. Plot no. 701, Sub Plot no. 701/D, Village Chadri, P.S. Kotwali, P.S. No. 199, District Ranchi measuring 1050 sq. ft. to Rinkoo Lohia, wife of Samir Lohia.

(iv) Ancestral Haveli at Laxmangarh, District

Sikar (Rajasthan) to Sanjay Lohia, being son.”

7. Learned counsel appearing for the petitioner submits that the said Will has been marked as Exhibit-2 and by way of referring the said Will, he submits that what has been stated in para-11 is fortified in light of the said Will. He further submits that the death certificate of Late Sitaram Lohia is marked as Exhibit-1. The Thumb impression of the testator has been identified by P.W.-1 petitioner herein namely Biren Poddar, which was marked as Exhibit-3. P.W.-2 has proved the signature of one of the attesting witness namely Hari Narayan Singh, which was marked Exhibit-5. He also submits that the said Hari Narayan Singh has left for his heavenly abode and his death certificate was marked Exhibit-4. He submits that the signature of said Hari Narayan Singh was proved by his son, who has been examined as P.W.-2.

8. Mr. Vikas Pandey, learned counsel appearing for the opposite parties has filed two sets of written statements on behalf of rest of the legal representative of the testator as disclosed in para-10 of the present probate case. One of the written statement has been filed by Sushil Lohia, Shekhar Lohia and Sanjay Lohia, where in para-8, it has been stated that the deponents pray that probate of the last Will and testament of Late Sitaram Lohia dated 07.04.2008 be granted to the executor namely Sri Biren Poddar. Mr. Pandey, further submits that another written statement has been filed on behalf of daughters / legal representatives of the testator namely Renu Rajgaria, Rekha Goenka, Uma Kanoria and Anita Ghuwalewala, where in para-8 also, it has been disclosed that probate of the last Will and testament of Late Sitaram

Lohia dated 07.04.2008 be granted to the executor namely Sri Biren Poddar.

9. Mr. Biren Poddar, the petitioner herein has been examined as P.W.-1, who is said to be the executor of the Will and in his deposition he has stated the *death certificate dated 21.07.2008 of Late Sitaram Lohia, who is testator of the Will dated 07.04.2008 has been shown by the learned counsel for the petitioner to Mr. Biren Poddar, who has stated that this is the original death certificate of Late Sitaram Lohia and it was marked as Exhibit-1. He further stated that this is the last and final Will of Late Sitaram Lohia, which is dated 07.04.2008 and he was in sound mind and thereafter he has executed the Will and at the time of execution, he was also present there and in his presence, the L.T.I. of Late Sitaram Lohia was put in and it was marked as Exhibit-2 and the L.T.I. was marked as Exhibit-3. He was cross-examined and he has stated that he was present there at the time of execution of Will. He saw the testator putting his L.T.I on the Will. The contents of the Will has already been filed in the affidavit. The testator was of the sound state of mind. Thereafter he was discharged.*

10. Suraj Singh, son of Late Hari Naryan Singh has been examined as P.W.-2, who in his deposition has stated that *he is son of Late Hari Narayan Singh. The death certificate of Late Hari Narayan Singh, dated 29.07.2022. This is a public document. It was marked as Exhibit-4. He further stated that the signature of Late Hari Narayan Singh which is put on the Will, is of his father. The signature was marked as Exhibit-5. Mr. Vikas Pandey, learned counsel stated that he does not require to cross-examine him. The witness was thereafter*

discharged.

11. Mr. Vikas Pandey, learned counsel submits that in light of the written statements, which are on affidavit can be treated as an evidence on behalf of the all the legal heirs and successors of the testator.

12. On query made by this court to the learned counsel appearing for the petitioner and all the legal representatives, they jointly submit that Sitaram Lohia died on 21.04.2008 and Binod Poddar and Biren Poddar respectively were made executor of the Will of Late Sitaram Lohia. They submit that the Will is typed, on which, the thumb impression of Late Sitaram Lohia was there, which has been identified by two of the witnesses namely Hari Narayan Singh and Madan Dubey. Learned counsel appearing for the petitioner and the legal representatives jointly submit that Will is true.

13. Having gone through the contents of the present case, the statements made by the witnesses and the documents produced and brought on record, such as death certificate of Late Sitaram Lohia and his last Will and testament dated 07.04.2008 (Exhibit-2), which is deposited in the office of learned Registrar General of this court. During the lifetime, Sitaram Lohia executed his last Will and testament in presence of two attesting witness namely Hari Narayan Singh and Madan Dubey. Hari Narayan Singh has left for his heavenly abode and his signature has been identified by his son, which was marked as Exhibit-5 and Madan Dubey is said to be traceless and by the said Will, it transpires that Sitaram Lohia bequeathed of scheduled properties in manner of para-11 of the present probate case, which has been noted

hereinabove. The petitioner herein is the executor of the Will. It has also been made clear that at the time of his death, said Sitaram Lohia used to reside within the jurisdiction of this court and further in light of the affidavit filed on behalf of legal representatives, it is crystal clear that they have no objection if the said Will is probated in favour of the petitioner, who is the executor of the will.

14. In the case of *Ishwardeo Narain Singh Vrs. Smt. Kamta Devi*, reported in (1953) 1 SCC 295 : AIR 1954 SC 280, the Hon'ble Apex Court held that the Court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court. Therefore, the only issue in a probate proceedings relates to the genuineness and due execution of the Will and the Court itself is under duty to determine it and preserve the original Will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate Court. This is clearly manifested in the fascicle of the provisions of the Act. The probate proceedings shall be conducted by the probate Court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the Will. Thus, it does no more than establish the factum of the Will and the legal character of the executor. Probate Court

does not decide any question of title or of the existence of the property itself.

15. In view of the above, there does not appear to be any impediment in granting the probate of said Will dated 07.04.2008, in favour of the petitioner, who is the executor of the Will. Thus, in view of all the above, this case for grant of probate is allowed. The Will dated 07.04.2008 executed by late Sitaram Lohia with respect to the property described therein is allowed to be probated in favour of the petitioner, who is the executor of the Will, who will act in terms of the Will.

16. In light of the above, this probate case is disposed of.

17. Office will proceed in accordance with law.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]