

RAM AVATAR SONI

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v.

MAHANTA LAXMIDHAR DAS AND ORS.

(Civil Appeal Nos. 10684-10685 of 2018)

OCTOBER 24, 2018

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[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Will – Will in question executed by one ‘MND’ was probated in favour of respondent no.1 – Appellant filed suit seeking revocation of the probate so granted – Application filed by the appellant u/Or. XXVI, r.10A CPC to send the Will in question to the hand-writing expert for comparison with the documents, available in the court in an earlier Probate Case of 1982, containing admitted signatures of ‘MND’ – Application allowed by District Judge – Order set aside by the High Court – Propriety of – Held: If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered – District Judge was right in allowing the application to send the Will in question to hand-writing expert – Further, the High Court was not right in saying that there was no specific allegation disputing the genuineness of the signature of ‘MND’ – To challenge the genuineness of the Will inter alia indicates challenge to the genuineness of the signature of ‘MND’ – Impugned order set aside – Will along with the documents containing admitted signatures of ‘MND’ be sent to the hand-writing expert for comparison – After receipt of the report of the hand-writing expert, trial court to proceed with the trial in accordance with law.

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Allowing the appeals, the Court

HELD: 1.1 If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the Will in question dated 12.03.1989 to hand-writing expert. [Para 8][43-D]

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1.2 The High Court was not right in saying that, in the plaint, the appellant has challenged only the genuineness of the Will

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A and nowhere made allegations with regard to the genuineness of the signature of 'MND'. To challenge the genuineness of the Will *inter alia* indicates challenge to the genuineness of the signature of 'MND'. The High Court was not right in saying that there was no specific allegation disputing the genuineness of the signature of 'MND'. The impugned order is liable to be set aside.

B As directed by the District Judge, the Will dated 12.03.1989 along with the documents set out in the petition filed by the appellant and in the order of the District Judge containing admitted signatures of 'MND' be sent to the hand-writing expert for comparison. After receipt of the report of the hand-writing expert,

C the trial court shall proceed with the trial in accordance with law. [Paras 9, 10][43-E-H; 44-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10684-10685 of 2018.

D From the Judgment and Order dated 30.06.2016 of the High Court of Orissa at Cuttack in CMP No. 684 of 2016 and order dated 20.09.2016 in RVWPET No. 207 of 2016.

Ranji Thomas, Sr. Adv., Aditya Sharma, K. S. Rana, Dr. V. P. Appan, Advs. for the Appellant.

E Ajit Kr. Sinha, Sr. Adv., Prabhash Kr. Yadav, Manoj Kr. Mishra, Mansoor Ali, Ms. Rubina Jawed, Naresh Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

F 2. These appeals arise out of the judgment dated 30.06.2016 passed by the High Court of Orissa at Cuttack in CMP No.684 of 2016 in and by which the High Court allowed the appeal filed by the first respondent thereby setting aside the order of the District Judge passed under Order XXVI Rule 10A CPC thereby allowing the appellant's prayer for sending the signature of the Will in question to hand-writing expert for comparison

G with Testator Natabar Das's admitted signatures.

3. The appellant herein filed C.S. No.2/34 of 2008/2003 seeking revocation of the Probate granted in favour of the first respondent i.e. Laxmidhar Mahapatra in Probate Misc. Case No.14/5 of 2000/1997.

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In the Probate Miscellaneous Case, the Will in question executed by Mahanta Natabar Das was the subject matter in dispute but according to the appellant/plaintiff, the said Natabar Das never executed any Will as Testator in favour of the first respondent-Laxmidhar Mahapatra. It is stated in the plaint that late Mahanta Natabar Das during his life time filed Probate Case No.19/13 of 1982 for Probate of the Will executed in his favour by one Jasoda Dasi and in the said proceeding, the admitted signature of Mahanta Natabar Das are said to be available in the petition, affidavit, vakalatnama, deposition and the signature of Mahanta Natabar Das appearing in those documents are required to be sent to the Hand-writing expert for comparison along with the Will in question and whether the signature in the Will in question is that of said Natabar Das or not? On the other hand, the case of the first respondent is that the Will was executed by the Testator Mahanta Natabar Das and it was a genuine document and it was legally probated by the competent Court.

4. Since the appellant seeks revocation of the Probate Case No.14/5 of 2000/1997 on the ground that the Will of Natabar Das is a fraudulent one, the crux of the issue is the genuineness of the Will executed by Natabar Das in favour of the first respondent. The petition was filed by the appellant under Order XXVI Rule 10A CPC to send the Will in question to the hand-writing expert, allegedly executed by Natabar Das in favour of the first respondent and probated in Probate Misc. Case No.14/5 of 2000/1997 with the documents containing admitted signatures of Natabar Das which are available in the court in the earlier Probate Case No.19/13 of 1982.

5. The application filed by the appellant under Order XXVI Rule 10A earlier came to be allowed by District Judge, Puri vide order dated 18.06.2013. The first respondent challenged the said order dated 18.06.2013 before the High Court in WP(C) No.14977 of 2013. By order dated 14.08.2014, the High Court set aside the order dated 18.06.2013 and directed the court below to consider the application filed under Order XXVI Rule 10A at a later stage of the proceedings that is after closure of the evidence from both sides. The High Court also directed disposal of the trial proceedings in CS No.2/34 of 2008/2003 at an earlier date. The trial commenced and parties adduced their evidence. At that stage, the District Judge vide order dated 15.03.2016 allowed the application filed by the appellants under Order XXVI Rule 10A CPC directing that the Will dated 12.03.1989 be sent to hand-writing expert

A for comparison with the admitted signatures of Natabar Das which are available in the petition, affidavit, vakalatnama and deposition in Probate Case No.19/13 of 1982. This order has been set aside by the High Court by the impugned judgment.

B 6. To resist the appeal and the prayer of the appellant to send the Will dated 12.03.1989 to hand-writing expert, the respondents *inter alia* have raised various grounds as under:-

C (i) Probate of the Will executed by Mahant Natabar Das dated 12.03.1989 was granted in favour of the first respondent Laxmidhar Das *vide* order dated 24.04.2001 in Probate Misc. Case No.14/5 of 2000/1997 in accordance with the procedure;

D (ii) The office of Commissioner Endowments (Odisha), Bhubaneshwar *vide* order dated 25.01.2002 in regard to Misc. Case No.179/2001 decided an application dated 04.01.2001 filed by the first respondent Mahanta Laxmidhar Das and given possession and management of the said Institution of Kabir Chaura; and

E (iii) The office of Divisional Inspector of Endowment, Bhubaneshwar *vide* Report No.165 dated 04.09.2009 under Section 41 of the Orissa Hindu Religious Endowments Act issued in favour of the first respondent in regard to the possession and management of the said Math and the management and possession was allowed in favour of the first respondent.

F Reliance is also placed upon the order passed by the Commissioner of Endowments in RC No.6/2015 dated 13.05.2016 in the revision filed by Mahanta Gopi Das against the order dated 28.01.2015 passed by the Assistant Commissioner of Endowments, Bhubaneshwar in OS No.7/2007.

G 7. In all the proceedings before the concerned authorities of Endowments, it appears that the authorities have passed various orders in favour of the first respondent-Laxmidhar Das mainly based upon the order of Civil Judge (Senior Division) in Probate Case No.14/5 of 2000/1997 dated 24.04.2001. The first respondent has been declared to be the person in management of the Institution only on the basis of the said order of Probate dated 24.04.2001.

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8. As pointed out earlier, the appellant has filed the suit CS No.2/34 of 2008/2003 challenging the genuineness of alleged Will executed by Natabar Das in favour of the first respondent and seeking revocation of the probate of the will. As submitted by the learned senior counsel appearing for the appellant, in the said suit, issue No.3 has been framed that “*Has the defendant No.1 by practising fraud managed to get the Will probated, which was a fabricated and manufactured one?*” Hence, the genuineness of the Will in question needs to be decided that is whether the signature in the Will dated 12.03.1989 allegedly executed by Natabar Das could be ascertained only by sending the document to hand-writing expert. As discussed above, earlier in WP(C) No.14997 of 2013, while setting aside the order of the District Judge dated 18.06.2013, the High Court has observed that the application filed under Order XXVI Rule 10A CPC can be considered at a later stage of the proceedings that is after closure of the evidence from both sides. After their witnesses were examined, the plaintiff/appellant again reiterated the prayer for sending the Will in question to hand-writing expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the Will in question dated 12.03.1989 to hand-writing expert.

9. The High Court was not right in saying that, in the plaint, the appellant has challenged only the genuineness of the Will and nowhere made allegations with regard to the genuineness of the signature of Mahanta Natabar Das. To challenge the genuineness of the Will *inter alia* indicates challenge to the genuineness of the signature of Mahanta Natabar Das. In our view, the High Court was not right in saying that there was no specific allegation disputing the genuineness of the signature of Mahanta Natabar Das. In the earlier WP(C) No.14977 of 2013 when the High Court has observed that the prayer under Order XXVI Rule 10A CPC can be considered at a later stage, the High Court was not right in setting aside the order of the District Judge dated 15.03.2016 in C.S. No.2/34 of 2008/2003 and the impugned order is liable to be set aside.

10. In the result, the impugned order of the High Court in CMP No.684 of 2016 dated 30.06.2016 is set aside and these appeals are allowed. As directed by the District Judge in his order dated 15.03.2016,

- A the Will dated 12.03.1989 along with the documents set out in the petition filed by the appellant and in the order of the District Judge containing admitted signatures of Mahant Natabar Das be sent to the hand-writing expert for comparison. After receipt of the report of the hand-writing expert, the trial court shall proceed with the trial in accordance with law.

Divya Pandey

Appeals allowed.