

By e-mail

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

No. HC.III-15/2018/792/G

From: Sri R. A. Tapadar,
Registrar (Judicial),
Gauhati High Court, Guwahati.

✓ **To:**

The District & Sessions Judge,

Barpeta / Baksa, Mushalpur / Bongaigaon / Cachar, Silchar /
Chirang, Kajalgaon / Darrang, Mangaldoi / Dhemaji / Dhubri /
Dibrugarh / Dima Hasao / Goalpara / Golaghat / Hailakandi /
Jorhat / Kamrup (M), Guwahati / Kamrup (R), Amingaon / Karbi
Anglong / Karbi Anglong (West) / Karimganj / Kokrajhar /
Lakhimpur, North Lakhimpur / Morigaon / Nagaon / Nalbari /
Sivasagar / Sonitpur, Tezpur / Tinsukia / Udalguri, Assam.

Dated Guwahati the 19th February, 2021

Ref: Order dated 19.07.2019, passed by the Hon'ble High Court of
Jharkhand at Ranchi, in Letters of Administration Case No. 01 of
2013.

Sir / Madam,

I am directed to forward herewith copy of the letter dated
11.01.2021 of Registrar General, High Court of Jharkhand along with the copy of
Order dated 19.07.2019, passed by the Hon'ble High Court of Jharkhand at
Ranchi, in Letters of Administration Case No. 01 of 2013, for circulation amongst
all the Judicial Officers in your district.

With warm regards,

Yours faithfully,

R. A. Tapadar
15.02.21

Encl: As stated above.

REGISTRAR (JUDICIAL)

Sh
19/2/2021

A
10-02-2021

Me 491-A
30-1-21

In the High Court of Jharkhand at Ranchi

Testamentary and Intestate Jurisdiction.

Letters of Administration Case No. 01 of 2013

In the matter of goods of Late Smt. Sharda MangalDeceased

Between

Krishna Kumar Singh S/O Late Dr. Surendra Sinha
Resident of Chandragarh House, Tagore Hill Road,
Morabadi, P.O. & P.S.-Bariatu, Town & District-Ranchi
(Jharkhand) Petitioner

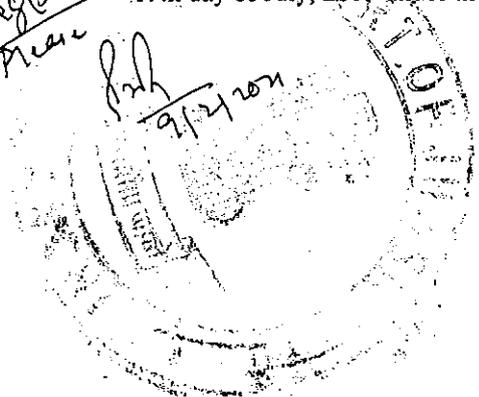
And

1. Arun Kumar Singh S/O Late Dr. Surendra Sinha
Resident of Chandragarh House, Tagore Hill Road,
Morabadi, P.O. & P.S.-Bariatu, Town & District-Ranchi
(Jharkhand)
2. General Public of Morabadi
P.O & P.S.-Bariatu, Town & District-Ranchi
3. State of Jharkhand, through Secretary,
Department of Revenue, Govt. of Jharkhand,
Project Building, Dhurwa, RanchiOpposite Parties

I, Ambuj Nath, Registrar General of High Court of Jharkhand, Ranchi, hereby certify that on the 19th day of July, 2019, the High Court of Judicature at Jharkhand granted Letters of Administration with copy of the Will dated 05/10/1996 annexed in respect of the properties and credits (as in Schedule A of the petition) of Late Smt. Sharda Mangal, wife of Late C.G. Mangal, Late of Chandragarh House, Morabadi, P.S.-Bariatu, District-Ranchi (Jharkhand), deceased, who died on 20/10/2008 at Aryan Hospital, Gorakhpur, to the petitioner herein namely Sri Krishna Kumar Singh and Opposite party No. 1 namely Dr. Arun Kumar Singh both son of Late Dr. Surendra Sinha, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town & District-Ranchi as the executor of the said Will and that such Letters of Administration with a copy of the Will annexed has effect over all the property of the deceased throughout India.

Given under my hand and the seal of this Hon'ble Court, vide the Order dated 19th day of July, 2019 under the seal of the Court.

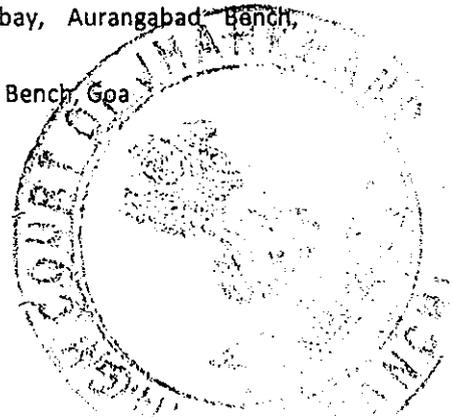
Regd (Nath)
Please



11.1.21
Registrar General
High Court of Jharkhand, Ranchi.

Copy To:-

1. The Registrar General, High Court of Judicature at Allahabad, Nyay Marg, Allahabad-211017, Uttar Pradesh
2. The Registrar General, High Court of Bombay, Mumbai-32, Maharashtra
3. The Registrar General, Calcutta High Court, 3, Esplanade Row West, Kolkata-700001, West Bengal
4. The Registrar General, High Court of Chhatisgarh, Bilaspur-495220, Chhatisgarh
5. The Registrar General, Delhi High Court, Sher Shah Road, New Delhi-110503
6. The Registrar General, The Gauhati High Court, Mahatma Gandhi Road, Guwahati-781001, Assam
7. The Registrar General, High Court of Gujarat, Sola, Ahmedabad-380060, Gujarat
8. The Registrar General, High Court of Andhra Pradesh, Nelapadu, Amravati-522202
9. The Registrar General, High Court of Himachal Pradesh, Ravenswood, Shmila-171001, Himachal Pradesh
10. The Registrar General, High Court of Jammu & Kashmir, near Jahangir Chowk Flyover, Srinagar, Jammu & Kashmir-180001
11. The Registrar General, High Court of Karnataka, High Court Buildings, Opp. to Vidhana Saudha, Ambedkar Veedhi, Bengaluru-560001, Karnataka
12. The Registrar General, High Court of Kerala, Ernakulam, Kochi-682031
13. The Registrar General, High Court of Madhya Pradesh, Jabalpur-482001, Madhya Pradesh
14. The Registrar General, Madras High Court, N Fort Road, Parrys, George Town, Chennai-600104, Tamil Nadu
15. The Registrar General, High Court of Manipur at Imphal, Mantripukhri-795002, Manipur
16. The Registrar General, High Court of Meghalaya, Shillong-793001, Meghalaya
17. The Registrar General, Orissa High Court, Cuttack-753002, Odisha
18. The Registrar General, High Court of Judicature at Patna, Patna-800001, Bihar
19. The Registrar General, High Court of Punjab & Haryana at Chandigarh-160001, Chandigarh
20. The Registrar General, High Court of Rajasthan at Jodhpur, Jodhpur-342001
21. The Registrar General, High Court of Sikkim, Gangtok, East Sikkim-737101, Sikkim
22. The Registrar General, High Court of Tripura, Capital Complex, Agartala-799010, Tripura
23. The Registrar General, High Court of Uttarakhand at Nainital, Nainital-263002, Uttarakhand
24. The Registrar General, High Court for the state of Telangana, Near Govt. City College, Madina, Charminar, Hyderabad-500066
25. The Registrar (Administration), Rajasthan High Court at Jaipur Bench, Jaipur
26. The Additional Registrar General, Madras High Court, Madurai Bench, Madurai
27. The Principal Registrar, High Court of Madhya Pradesh, Indore Bench, Indore
28. The Principal Registrar, High Court of Madhya Pradesh, Gwalior Bench, Gwalior
29. The Registrar (Administration), High Court of Bombay, Nagpur Bench, Nagpur
30. The Registrar (Administration), High Court of Bombay, Aurangabad Bench, Aurangabad
31. The Registrar (Administration), High Court of Bombay, Goa Bench, Goa
32. The Judicial Commissioner, Civil Courts, Ranchi, Jharkhand



IN THE HIGH COURT OF JHARKHAND AT RANCHI

Letters of Administration Case No. 1 of 2013

Krishna Kumar Singh, son of Late Dr. Surendra Sinha, by caste Rajput, by faith Hindu, by occupation Service, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi, at present residing at 4684 Home PL, PLANO, Texas 75024 - USA, through his power of attorney holder Shri Sanjay Kumar, S/o Late Kanhaiya Lal Singh, r/o Nawagarh, P.O. Karkhari, P.S. Madhuban, Dist. Dhanbad **Petitioner**

Versus

1. Arun Kumar Singh, son of Late Dr. Surendra Sinha, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi, at present residing at 26, Guthrie Court, Motherwell, United Kingdom, ML- 13
2. General Public of Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi.
3. State of Jharkhand, through Secretary, Department of Revenue, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi. **Opp. Parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Vishal Kumar Tiwary, Advocate
Ms. Kirti Saboo, Advocate
For the Resp. No. 1 : Mr. Rajeev Ranjan Tiwary, Advocate
For the State : Mr. Prashant Pallav, Advocate

50/19.07.2019

Heard Mr. Vishal Kumar Tiwary, Advocate assisted by Ms. Kirti Saboo, Advocate appearing for the petitioner.

2. Heard Mr. Rajeev Ranjan Tiwary, learned counsel appearing on behalf of the Resp. No. 2.

3. Heard Mr. Prashant Pallav, learned counsel appearing on behalf of the State of Jharkhand.

4. From the records of this case it appears that initially the case was filed through the power of attorney but subsequently the *Vakalatnama* of the petitioner was also filed in this case and the petitioner has deposed as P.W.-1.

5. This application has been filed under section 278 read with section 300 of Indian Succession Act, 1925 for grant of Letter of Administration to the estate of Smt. Sharda Mangal on

the basis of her last Will and testament. As per the case of the petitioner, Smt. Sharda Mangal, wife of C.G. Mangal died at Aryan Hospital, Gorakhpur, Uttar Pradesh on 20.10.2008. The original place of her residence, as stated in the petition was Chandragarh House, Morabadi, P.S. Morabadi, Bariyatu within the district of Ranchi and the petitioner being the nephew of the Testatrix, is one of the beneficiaries of the Will, involved in this case along with his brother, who is opposite party no. 1.

6. The specific case of the petitioner is that the Testatrix had two brothers namely Janardan Singh and Dr. Surendra Sinha, both of them died. Dr. Surendra Sinha died leaving behind two sons being the petitioner and the opposite party no. 1 herein. The petitioner at present, in the course of his service is residing in Texas U.S.A. The Testatrix died on 20.10.2008 at Gorakhpur, Uttar Pradesh without any issue and her husband pre-deceased her and it has been stated that there is no heir from the side of the husband. The names of the legal heirs of Testatrix has been mentioned in para 7 of the petition, which are as follows:

“(i) Krishna Kumar Singh, son of Late Dr. Surendra Sinha, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi, being the petitioner hereof.

(ii) Anil Singh (nephew, brother's son), son of Late Dr. Surendra Sinha, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi.

(iii) Madhavi Singh (niece), wife of Dr. Sanjeev Ranjan Singh, daughter of Dr. Surendra Sinha, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi.

(iv) Mridula Singh, daughter of Dr. Surendra Singh, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi.

(v) Maruti Singh (niece), wife of Dr. Amardeep Singh, resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S. Bariatu, Town and District Ranchi."

7. It has been stated that the assets which are likely to come to the petitioner and other beneficiary namely, Arun Kumar Singh is worth Rs. 50 lakhs and the details of the property has been given in Schedule A to the plaint. It has also been stated that no application has yet been made by anybody to any other court to obtain probate for the said will or any Letter of Administration.

8. The certified copy of the will dated 05.10.1996 has been annexed alongwith the petition. As per the will, the Testatrix had declared that all the properties movable or immovable, including the properties allotted to the Testatrix in her share from partition suit no. 153 of 1972, wherein the Testatrix was the defendant no. 2, was possessed or entitled to at the time of her death or after her death were subject matter of the will. It was clearly indicated in the will that the entire properties of the testatrix, movable and immovable, shall be allotted in the name of her legatees i.e her nephew namely K. K. Singh and Dr. Arun Kumar Singh both sons of Late Dr. Surendra Sinha. As per the will, the legatees would be entitled to half and half share.

9. The Schedule A to the plaint gives the details of the property which includes property at Patna, Ranchi and Aurangabad (Bihar).

10. So far as the property contained at Sl. No. (iv) of Schedule A to the petition is concerned, the same is the property situated at Aurangabad and was incorporated by filing a petition for amendment by way of I. A. No. 8873/17, which was allowed vide order dated 17.11.2017. The learned counsel for the petitioner submits the aforesaid property, which was mentioned in the proposed amendment petition being I.A. No.

8873/2017 was left out due to typographical error in Schedule A of the property and the property purchased by the Testatrix could not be incorporated. He submits that the said property was purchased by the testatrix vide sale deed dated 08.02.1982 as has been mentioned in the petition for amendment itself. The counsel submits that the amendment was allowed vide order dated 17.11.2017 and in the said order itself, it was observed that notices were earlier issued to the opposite parties i.e. opposite party no. 1, as well as to the General Public of Morabadi, P.S. Bariyatu and on the State of Jharkhand. However on account of aforesaid amendment this Court passed an order for citation to be issued to the General Public to be pasted at conspicuous places in the district court of Patna, Office of the District Magistrate, Patna and the places where two properties of Patna are situated and apart from above, citations were also issued to be pasted at conspicuous places in the office of District Magistrate, Aurangabad and at the public places where the property under P.S. Nabinagar is situated.

11. Learned Counsel for the petitioner submits that pursuant to the aforesaid order, the directions as mentioned in said order were duly carried out. In order dated 06.07.2018, it has been observed that pursuant to the order dated 17.11.2018; 09.03.2018 and 13.04.2018 requisites for re-issuance of citations were issued and the same were duly served and service report was also annexed along with the records. He further submits that from the perusal of the order dated 06.07.2018, it appears that the entire formality regarding issuance of citation was duly complied with.

12. The learned counsel for the petitioner further submits that as per the provisions of Indian Succession Act, 1925, an application for issuance of Letter of Administration can be filed by giving the following details :

(a) The time and place of deceased death;

- (b) The family and other relatives of the deceased and their respective residences;
- (c) The right in which the petitioner claims;
- (d) The amount of assets which are likely to come to the petitioners;
- (e) When application is to the District Judge, then the deceased at the time of his death has a fixed place of abode and has some property situated within the jurisdiction of the judge; and
- (f) When the application is to a District delegate, then the deceased at the time of his death had a fixed place of abode within the jurisdiction of such delegate.

13. The learned counsel submits that in the instant case the condition precedent for filing an application for Letter of Administration was duly satisfied in as much as, as per the Schedule of the property, one of the properties was situated within the State of Jharkhand and in the District of Ranchi and the other details were also mentioned as required under Section 278 of the Indian Succession Act, 1925.

14. Pursuant to the notices issued by the court, the opposite party no. 1 has filed his written statement and opposite party no. 3 has filed counter-affidavit. So far as the opposite party no. 1 is concerned, he is a co-beneficiary under the will and has fully supported the case of the petitioner. The opposite party no. 1 is the own brother of the petitioner and nephew of the Testatrix of the will namely, Sharda Mangal. He has stated in his written statement that Sharda Mangal had executed a registered will dated 05.10.1996 in respect of the properties mentioned in the schedule of the petition as well as for other properties in the office of the District Sub-Registrar, Ranchi in favour of the petitioner and opposite party no. 1. It was also pointed out by the opposite party no. 1 that the properties mentioned in the schedule of the petition, does not include the

properties situated at village- Chandragarh, pertaining to Khata No.3 purchased in the year 1982 and accordingly, objected to the maintainability by stating that without including the said property, the case was not maintainable. The number of the partition suit i.e. partition suit no. 153 of 1972 which has been mentioned in the will was also mentioned in the written statement.

15. The counsel for the petitioner submits that the objection which was raised by opposite party no. 1 regarding non inclusion of certain property was taken care of by filing a petition for amendment as aforesaid, which was duly allowed and accordingly, the left out property, which was left out by inadvertence, has already been included in the schedule A to the main petition.

16. So far as the opposite party no. 3 is concerned, it represents the state and the State has filed a counter-affidavit by stating that no relief has been claimed against the opposite party - State and the will has been executed under the signature of District Sub-Registrar, Ranchi, who admits only to the extent that Smt. Sharda Mangal had executed the will registered before the District Sub- Registrar, Ranchi on 05.10.1996 and the Secretary, Revenue Department of the State of Jharkhand appears to have been made party which is formal in nature.

17. The learned counsel for the petitioner submits that in support of the will, the certified copy of the registered will was produced along with main petition. However, by virtue of the orders passed by this Court, the learned Sub- Registrar, Ranchi had appeared before this Court and has deposited the original will which is now available in the records of this case for the purposes of adjudication of the instant case.

18. The learned counsel for the opposite parties have not disputed any of the above submissions advanced on behalf of the petitioner.

19. The learned counsel appearing for the opposite party no. 3 submits that the State has not decided the claim of the petitioner as opposite party no. 3 did not have any stake in the property involved in this case, but certainly this Court will have to examine the legality, validity and genuineness of the will in the light of the provisions of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1972 and also in the light of Section 40 and 41 of the Registration Act.

20. Before proceeding further, this court is of the considered view that apparently the present proceedings for grant of letters of administration is uncontested. It has been held by the Hon'ble supreme court in the judgement reported in (2003) 7 SCC 301 at para 8 *that it is settled law that a testamentary court, while granting probate or letter of administration does not even consider, particularly in uncontested matters, the motive behind execution of a testamentary instrument. A testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. It is settled law that grant of probate or letter of administration does not confer title to property. They merely enable administration of estate of the deceased. Thus it is always open to a person to dispute title even though probate or letter of administration is granted.*

21. In view of the aforesaid judgement, this court in this case will only examine whether the Testatrix executed the testamentary instrument of her free will and in accordance with law ?

This court will not enter into any title dispute and it is also made clear that even if the letter of administration is ultimately granted, the same will not confer any title to any person.

22. The petitioner has produced altogether three witnesses whose details are as follows:

- (i) P.W-1 , Krishna Kumar Singh, son of Late Dr. Surendra Sinha, the petitioner himself.
- (ii) P.W-2, B.D. Mishra, son of Parmanand Mishra, one of the attesting witnesses to the will.
- (iii) P.W-3, Dr. Maruti Singh, wife of Dr. Amardip Kumar, and sister of the petitioner as well as opposite party no. 1.

23. All the three witnesses have appeared and filed their examination-in-chief and one of the witnesses namely, Dr. Maruti Singh has further recorded her chief by appearing before this Court. All the three witnesses have presented themselves for cross-examination before this Court and the Court has also put some questions to the witnesses in order to arrive at a satisfaction regarding genuineness and due execution of the will involved in this case.

24. The opposite party no. 1, Arun Kumar Singh has examined himself as D.W- 1 and has produced Madhavi Singh wife of Dr. Sanjeev Ranjan Singh and daughter of Late Surendra Sinha and examined her as D.W- 2.

25. The D.W-1 and 2 have filed their examination in chief and have presented themselves for cross-examination and after the cross-examination, they have been put certain questions by this Court, to which they have responded.

26. The following exhibits have been exhibited on behalf of the petitioner:

- (1) Exhibit 1- Death Certificate of the Testatrix Smt. Sharda Mangal, who died on 20.10.2008 at Aryan Hospital, Gorakhpur, Uttar Pradesh. This has been exhibited by P.W. - 1 namely Krishna Kumar Singh i.e. the petitioner himself.
- (2) Exhibit 2- The income tax return for the assessment year 2017-18.
- (3) Exhibit 3- Certified copy of the sale-deed executed in favour of Testatrix with regard to Schedule A (iv) against the

property from the office of the District Sub-Registrar, Aurangabad.

(4) Exhibit 4- P.W. 2 namely B.D. Mishra, who is one of attesting witnesses has exhibited the certified copy of the will, which has been marked as exhibit-X by and large for identification and in his further examination-in-chief, he has identified the original will, which has been produced by the learned Sub-Registrar of District Ranchi and has been marked as Exhibit-4.

27. Learned counsel for the petitioner further submits that Exhibit-4/e is the signature of P.W- 1 on the Will and Exhibit-4/f is the signature of Mr. Durgesh Kumar Mishra (since deceased) on the Will. The signature of Smt. Sharda Mangal on the Will has been marked as Exhibit-4/d. The counsel submits that the Exhibits 4/d, 4/e and 4/f have been marked during the further examination-in-chief of P.W.-2, who was also subjected to court's questions during his appearance in the court as witness. He submits that no objection has been filed before this Court objecting to the prayer of the petitioner for grant of Letters of Administration and there is no suspicious circumstances on record to take any contrary view. He also submits that the necessary ingredients for grant of Letters of Administration under the provisions of Sections 63 to 78 of Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872 is duly satisfied and accordingly he submits that Letters of Administration may be granted.

28. Learned counsel for the petitioner has also submitted that in view of provisions of Chapter-XIV of Jharkhand High Court Rules, the necessary certificate as required under Article 113 of Jharkhand High Court Rules is on record and he further submits that all the necessary requirements for the purposes of grant of Letters of Administration in the instant case, are duly satisfied.

29. Learned counsel appearing on behalf of opposite party - State, on the other hand, submits that the State has not filed any objection and the State has no stake in the properties involved in this case. However, he submits that the conscience of the Court is required to be satisfied and if the Court is satisfied with due execution of will involved in this case, the State has no objection to the grant of letter of administration to the petitioner.

30. So far as opposite party no. 1 is concerned, he has fully supported the grant of Letters of Administration in favour of the petitioner.

31. **Evidence of the petitioner - P.W.-1 - Krishna Kumar Singh-** He has stated that he has filed this case for grant of Letter of Administration, with regard to the Will executed by Smt. Sharda Mangal, on 05.10.1996. He has stated that Smt. Sharda Mangal is his Aunt (Sister of his father), who died on 20.10.2008 at Aryan Hospital, Gorakhpur (U.P.). He has exhibited a copy of the death certificate. He has stated that his Aunt Smt. Sharda Mangal inherited property and was also allotted share in partition suit No.-153 of 1972, which she was holding and possessing till the time of her death and thereafter he and his other brothers and sisters were substituted in her place, description of the same is given in schedule of his petition filed in this Court. He has further stated that his Aunt Smt. Sharda Mangal had executed a registered Will on 05.10.1996 bequeathing her all property to him and his brother Arun Kumar Singh, who is the Opposite Party No.-1 in the present Case. He has also stated that he had seen the certified copy of the said Will dated 05.10.1996 which bears signature of his Aunt Sharda Mangal and attesting Witnesses are Binayak Dutta Mishra and Durgesh Kumar Mishra when, he visited Ranchi. He has stated that his Aunt was in possession of her share in her Estate and she had every right to bequeath her

property through Will and she has executed the said Will voluntarily, in her sound mental condition. He has stated that the property mentioned at Schedule-A(iv) is the self-acquired property of Sharda Mangal, his Aunt and after her death P.W. 1 and his brother and sister have formed HUF and Income Tax Return on behalf of HUF is also filed yearly. He has also stated that they are in physical cultivating possession of the agricultural land of Scheduled-A (iv) and there is no encumbrance over the said property. He has exhibited the certified copy of the sale deed executed in favour of Sharda Mangal with regard to Schedule-A(iv) property obtained from the Office of District Sub Registrar, Aurangabad (Bihar) and the same has been marked as exhibit-3 .

Evidence of the attesting witness - P.W.-2 - Binayak Dutta

Mishra he has stated that he is acquainted with the family of Smt. Sharda Mangal, wife of Late C.G. Mangal, who was the Resident of Chandragarh House, Morabadi, P.O. & P.S.-Bariatu, District-Ranchi. He has stated that on 05.10.1996 Smt. Sharda Mangal had executed her last Will in his presence and also in presence of Durgesh Kumar Mishra and she put her signature in the said Will in their presence, which they have testified being attesting Witness Nos. 1 & 2 of the said Will. This is the certified copy of the will, which is obtained from the office of Sub-Registrar, Ranchi, which has been filed in the present L.A. Case and the same is on record and the same is exhibited. He has also stated that another attesting witness of the Will namely Durgesh Kumar Mishra has died in the year 2004 and has stated that Smt. Sharda Mangal had executed the said Will voluntarily and in her sound mental state. He has exhibited the certified copy of the will marked as exhibit X for identification and has exhibited the registered will received from the registry office as exhibit -4. This Witness has also deposed and exhibited his signature on the Will as Exhibit-4/e

and identified the signature of the other attesting witness , namely, Durgesh Kumar Mishra (since deceased) as Exhibit-4/f and also identified and exhibited the signature of the Testatrix Smt. Sharda Mangal on the will. He has further deposed in response to the Court's questions that he did not go to the Registry Office. He had signed the Will at Chandragarh House, Morabadi and it was signed in presence of Smt. Sharda Mangal as well as in presence of Smt. Shantimani , Wife of Late Dr. Surendra Sinha, Durgesh Kumar Mishra (other attesting witness, since deceased) and Jagdish Sahu. He has also stated that he had signed on the Will at the direction of Smt. Sharda Mangal and that Smt. Sharda Mangal had signed her Will in his presence.

32. Evidence of the Maruti Singh - P.W.-3 - She has stated that she is the sister of the petitioner and the opposite party no. 1 and the testatrix was her aunt. She has stated that the testatrix had told her that she has executed a registered will on 05.10.1996 bequeathing her all property equally in favour of the petitioner and opposite party no. 1 . She has also stated that her aunt had shown her the will when she came to Ranchi and that this witness has no objection to grant of letter of administration in the present case. She has responded to court's question and has stated that she is a gynecologist by profession and her aunt was in sound state of mind and health throughout.

33. Evidence of the Arun Kumar Singh - D.W.-1 - Arun Kumar Singh, aged about 54 years, son of Late Dr. Surendra Sinha, Resident of Chandragarh House, Tagore Hill Road, Morabadi, P.O. & P.S.-Bariatu, Town & District Ranchi, at present residing at 11 Burghfield Drive Chorley, United Kingdom, PR77FN, has stated that he is Opposite Party No.-1 in the present Letter of Administration Case. Smt. Sharda Mangal is his Aunt (Sister of his father), who died 20.10.2008 at Aryan Hospital, Gorakhpur (U.P.). Smt. Sharda Mangal has inherited

property and was also allotted share in partition suit No.-153 of 1972, which she was holding and possessing till the time of her death, description of the same is given in scheduled of the petition filed in this Hon'ble Court. His Aunt Smt. Sharda Mangal had executed a Registered Will on 05.10.1996 bequeathing her all property to him and his brother Krishna Kumar Singh, who is the petitioner in the present L.A. Case. He has stated that his Aunt was in possession of her share in her Estate and she had every right to bequeath her property through Will and she has executed the said Will voluntarily, in her sound mental condition. He has further stated that he has no objection if the Letter of Administration is granted in the present case.

34. Evidence of Dr. Madhvi Singh - D.W.-2 - Madhvi Singh, Aged about 61 years, Wife of Dr. Sanjeev Ranjan Singh, Daughter of Late Dr. Surendra Sinha, Resident of 38/60, senior Officers' Flat, Near Hartali Gate, Bailey Road, Patna - 1, has stated that she is sister of Krishna Kumar Singh and Arun Kumar Singh and Smt. Sharda Mangal was her aunt. She has stated that her aunt Smt. Sharda Mangal told her that she had executed a Registered Will on 05.10.1996, bequeathing her all property equally in favour of my both brothers namely Krishna Kumar Singh & Arun Kumar Singh. That her aunt had shown the said Will to her, when she came to Ranchi and the present L.A. case is filed for giving effect to the Will of her aunt. She has further stated that she has no objection if the Letter of Administration is granted in the present case.

35. This court finds that the will involved in this case is a registered will marked as exhibit -4 and has been called for and produced from the registry office at Ranchi. The present proceeding is uncontested by the opposite parties. The petitioner and the opposite party no. 1 are full brothers and the testatrix is their aunt. The two sisters of the petitioner as well as

the opposite party no. 1 have deposed as P.W-3 and D.W.-2 who have fully supported the case of the petitioner. The P.W-1 has also fully supported the case. As discussed above, it has come in evidence that at the time of execution of the will the testatrix was in good health. The will was executed on 05.10.1996 and the testatrix died on 20.10.2008 as is apparent from the exhibit 1. One of the attesting witnesses namely Durgesh Kumar Mishra has expired in the year 2004 as deposed by the other witness of the will namely Binayak Dutta Mishra who has deposed as P.W-2. Although the death certificate of Durgesh Kumar Mishra has not been exhibited, but there is no material on record to disbelieve his statement made in examination -in -chief. P.W-2 has clearly stated that on 05.10.1996 the testatrix executed the will in his presence and also in presence of the other witness and she put her signature in the said will in the presence of the two witnesses . He has identified his signature on the will as exhibit -4/e and has identified the signature of the other witness on the will as exhibit 4/f . He has also identified the signature of the testatrix on the will which has been marked as exhibit 4/d . This Court finds that no suspicious circumstance has been brought to the knowledge of this Court and there is no suspicion in the mind of the Court in connection with the genuineness of the will. The scope of enquiry by this Court at this stage is whether the Will involved in this case is duly executed in terms of Indian Succession Act, 1925 read with Indian Evidence Act, 1872 and whether the petitioner is entitled for the relief as prayed for.

36. So far as Section 278 of the Indian Succession Act, 1925 is concerned, it provides the necessary ingredients of the application for Letters of Administration, those are as under:-

- (a) the time and place of the deceased's death;
- (b) The family or other relatives of the deceased, and their respective residences;

- (c) the right in which the petitioner claims;
- (d) the amount of assets which are likely to come to the petitioner's hands;

37. This Court finds that the aforesaid necessary ingredients for the purposes of grant of Letters of Administration as claimed by the petitioner, are available on record.

38. Section 63 of Indian Evidence Act, 1925 is quoted hereibelow:-

"63. Execution of unprivileged Wills. – Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged.] or a mariner at sea, shall execute his Will according to the following rules:-

- (a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*
- (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

39. This Court further finds that in the judgment passed by Hon'ble Supreme Court reported in (2013) 7 SCC 490 (*M. B. Ramesh (D) By Lrs vs. K. M. Veeraje Urs (D) By Lrs. & Ors.*), the Hon'ble Supreme Court has held that the requirement of

Section 63(c) of Indian Succession Act, 1925 is that two or more witnesses have to see the testator sign or affix his mark to the Will and each of the witnesses have also to sign the Will in presence of the testator. It has been also held that at the same time the provisions of Section 63 of the Indian Succession Act, 1925 cannot be read in isolation, it has to be read with Section 68 of the Indian Evidence Act, 1872. In the instant case, one of the attesting witness has expired and accordingly the other attesting witness has appeared before this Court for the purposes of satisfying the requirement of Section 63 of Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872.

40. It has been held by the Hon'ble Supreme Court in the judgment reported in (2006) 13 SCC 449 (*B. Venkatamuni V. C.J. Ayodhya Ram Singh*), at para - 22, wherein the principle in this regard has been reiterated, that the onus of the propounder can be said to be discharged on the proof of the essential facts in connection with the Will. Those are, (a) the Will was signed by the testator, (b) the testator at the relevant time was in sound and disposing state of mind, (c) he understood the nature and effect of the depositions and (d) put his signature to the documents of his own free will. Unless all these ingredients are established by the propounder, the onus cannot be said to have been discharged.

41. This Court further finds that in the deposition of P.W.-3 who has deposed on behalf of the petitioner Dr. Maruti Singh who is the daughter of Late Dr. Surendra Sinha (brother of the Testatrix), she has clearly said that she used to visit Ranchi to see her aunt and her aunt used to visit Delhi to see her and she is a Gynecologist by profession and her aunt, namely, (Late Smt. Sharda Mangal) was in sound state of mind and healthy throughout. This Court further finds that in view of the uncontroverted statements made by P.W.-3, the Testatrix was in

her right state of mind for the purposes of execution of the Will involved in this case. Admittedly, this Will is a registered Will.

42. This Court further finds that the attesting witness, namely, Binayak Dutta Mishra has been examined as P.W.-2. In his examination-in-chief, he has clearly stated that on 05.10.1996 Late Smt. Sharda Mangal had executed the Will in his presence and also in presence of Durgesh Kumar Mishra and she put her signature in the said Will in their presence which they had testified being attesting Witness Nos. 1 and 2 .He has further stated that another attesting witness, namely, Durgesh Kumar Mishra expired in the year 2004. He has also deposed in his examination-in-chief that Smt. Sharda Mangal had executed the Will voluntarily and in her sound mental state.

This Witness has also deposed and exhibited his signature on the Will as Exhibit-4/e and identified the signature of the other attesting witness, namely, Durgesh Kumar Mishra (since deceased) as Exhibit-4/f and also identified and exhibited the signature of the Testatrix Smt. Sharda Mangal on the will. He has further deposed in response to the Court's questions that he did not go to the Registry Office. He had signed the Will at Chandragarh House, Morabadi and it was signed in presence of Smt. Sharda Mangal as well as in presence of Smt. Brij Shanti Mani ,Wife of Late Dr. Surendra Sinha, Durgesh Kumar Mishra(other attesting witness , since deceased) and Jagdish Sahu. He has also stated that he had signed on the Will at the direction of Smt. Sharda Mangal and that Smt. Sharda Mangal had signed her Will in his presence.

43. Accordingly, in view of the evidences available on record, this Court finds that signing of the Will by Late Smt. Sharda Mangal in presence of both the witnesses and both the witnesses putting their signatures on the Will at the instance of the testatrix of the Will, is proved on record and there are no suspicious circumstances on record. Considering the fact that

the Will itself has been registered, this Court has no hesitation in granting the Letters of Administration with regards to schedule A properties in favour of the petitioner, who shall do the needful in terms of the Will. Accordingly, the Letters of Administration is hereby granted with regards to schedule A properties of the petition.

44. The required formalities as contemplated under Chapter-XIV of Jharkhand High Court Rules, 2001 are directed to be duly complied by the learned Registrar General of this Court.

45. This petition is accordingly disposed of.

(Anubha Rawat Choudhary, J.)

Pankaj/Mukul