

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10338 of 2023

Petitioner :- Raju

Respondent :- Smt. Ramshree @ Saguna Devi And 5 Others

Counsel for Petitioner :- Kaushal Kishore Mani, Sachida Nand Tiwari

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

2. This petition has been filed seeking the following relief:

"(i) Issue an order or direction to the Civil Judge (Senior Division), Jaunpur to decide the restoration application dated 1.3.2013 of the petitioner registered as Misc. Case No. 37 of 2013 (Raju Versus Smt. Ramshree Devi and others) in Succession Case no. 92 of 2007 (Ramshree Versus Pratap @ Raju) pending before him within a stipulated period to be fixed by this Hon'ble Court, so that justice may be done."

3. Shri K.K. Mani, learned counsel for the petitioner states that a succession case was filed in the court of the Civil Judge (Senior Division), Jaunpur by the plaintiff-respondent- Smt. Ramshree which was registered as Misc. Succession Case No. 92 of 2007. By an order dated 28.10.2007, a succession certificate was directed to be issued. Thereafter, on 22.12.2007, the succession certificate was issued. The petitioner filed an application under Section 151 read with Order 9 Rule 13 CPC dated 7.10.2008 seeking the restoration of the succession case aforesaid and "recall of the order" dated 22.12.2007. It is stated that on 27.11.2009, the aforesaid application was dismissed for non-prosecution. Against that order dated 27.11.2009, an application dated 1.3.2013 under Section 151 CPC was filed for recalling the order dated 27.11.2009 which is stated to be pending.

4. It is noted that on 22.12.2007, no order was passed but a succession certificate was granted and issued. There are conditions for revocation mentioned in Section 383 of the Indian Succession Act, 1925. Therefore, in my opinion, an application for restoration, which, in this present case was filed on 7.8.2008 and registered as Misc. Case No. 276 of 2008, would not be maintainable. Revocation of the succession certificate may be sought under Section 383 of the Indian Succession Act.

5. Under the circumstances, interference in the matter is declined and this petition is **dismissed**.

6. Registrar (Compliance) is directed to communicate this order to the court concerned within a period of 15 days.

Order Date :- 2.12.2023

A. V. Singh

(Jayant Banerji, J.)