

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.454 of 2013

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1. Birendra Kumar S/O Late Balchand Ram Resident Of Mohalla Raja Bazar, Post Office And Police Station Jehanabad, District Jehanabad.

.... Appellant/s

Versus

1. Sandeep Kumar S/O Late Bal Krishna Sao @ Danilal Resident Of Mohalla Raja Bazar, Post Office And Police Station Jehanabad, District Jehanabad.
2. Urmila Devi W/O Late Gopal Prasad Sahu Resident Of Mohalla Gola Road, Sahu Colony, Police Station Ramgarh Cantt., District Hazaribagh (Ramgarh).
3. Rakesh Kumar S/O Late Gopal Prasad Sahu Resident Of Mohalla Gola Road, Sahu Colony, Police Station Ramgarh Cantt., District Hazaribagh (Ramgarh).
4. Kabita Devi W/O Jay Prakash Prasad Resident Of Mohalla Gola Road, Sahu Colony, Police Station Ramgarh Cantt., District Hazaribagh (Ramgarh).
5. Madhu Devi W/O Binod Prasad Resident Of Mohalla Mangoo Bus Stand, Police Station Jamshedpur Tata, District Jamshedpur (Jharkhand).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.T.N.Maitin, Sr. Adv.
Mr. Ashok Kumar Adv.

For the Respondent no.1 : Mr..S.Dwivedi, Sr. Adv.
Mr. Ratan Kumar Dubey,
Mr. Parth Gaurav, Adv.

For the respondent no.4 : Mr. JI tendra Kishore Verma,Adv.
Mr. Anjani Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

18 17-12-2015

Heard counsel for the appellant and the respondents.

In the present case, appellant is challenging the order dated 31st May 2013 passed in Misc. Case No. 19 of 2007 by which the court below has revoked the letters of administration granted in favour of legatee, recorded that Bal Kishun Ram @ Daini Lal was a lunatic his wife and sons were not

made party to that proceeding so much so Bal Chand had executed the Will even with respect to property standing in the name of Bal Krishna, aforesaid reasons, are worth for revocation of the Will.

Some facts are necessary to be taken into consideration for the purpose of disposal of this case. Bal Chand Ram had three sons, Birendra Kumar, Gopal Prasad Sahu and Bal Krishna Sahu and two daughters Sudama Devi and Gayatri Devi. Bal Chand Ram executed the Will in favour of Birendra and Gopal Prasad Sahu on 6th February 1982 which was registered later on. Bal Chand Ram died on 13th May 1984. Birendra and Gopal filed application for probate which was registered as Probate Case No. 2 of 1989/4 of 1992.

As per appellant, as no one had objected the grant of letters of administration, accordingly, letters of administration was issued vide order dated 24th November 1993. Bal Krishna was made a party but he did not appear. Partition suit was filed by Bal Krishna and his sons which was dismissed. As has been claimed by the appellant Misc. Case No.7 of 1992 was filed by Bal Krishna which has been disputed by the counsel for the other side and later on another Misc. case was filed vide Misc. Case No. 11 of 1995 by the son of Bal Krishna which was also dismissed. That was affirmed by this Court in Misc. Appeal no. 270 of 1966.

At a later stage Sandeep Kumar son of Bal Krishna Sah filed revocation case which was registered as Misc. Case No. 19 of 2007. It appears that notices were issued and the court below revoked the letters of administration on the ground of improper representation of Bal Krishna Sah.

Lots of argument has been advanced from the side of appellant that the application is barred by limitation, Sandeep Kumar has no caveatable right, improper impleadment is not enough to revoke the letter of administration. Letter of administration qualify the requirement for probate and other grievances, other side has also submitted about Bal Krishna Sah being lunatic, not properly represented, rather not impleaded, including the property in his name is subject of will, so whole proceeding vitiates.

This Court is not deciding any of the issues as it appears from the order of the court below without making proper enquiry and without going in detail of the matter by cryptic manner has passed the order of revocation. Lots of arguments have been made from the side of appellant which have been objected by the other side, including that documents were not exhibited properly. It appears that the proceeding was not conducted in proper manner. In such a situation order cannot be

allowed to stand.

Accordingly, the order impugned is set aside and the matter is remanded back for fresh consideration. Parties will be at liberty to take all the points, including limitation, misrepresentation whatever they want and they are at liberty to file documents, including locus of the applicant, specifically with regard to revocation of the probate.

This Court is not going to the merit of the case and is not giving any finding in favour of either of the parties. The court below will adjudicate the matter afresh.

Accordingly this petition is disposed of.

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(Shivaji Pandey, J)