

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5842 of 2015

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Mohan Mistri

.... Petitioner/s

Versus

Manjur Hussain & Ors

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.13066 of 2014

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Mohan Mistri

.... Petitioner/s

Versus

Manjur Hussain & Anr

.... Respondent/s

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Appearance :

(In CWJC No.5842 of 2015)

For the Petitioner/s : Mr. Jitendra Kishore Verma

For the Respondent/s : Mr.

(In CWJC No.13066 of 2014)

For the Petitioner/s : Mr. Jitendra Kishore Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

5 30-11-2015 Heard learned counsel Mr. Jitendra Kishore Verma

appearing on behalf of the petitioner and the learned counsel

Mr. Gopal Govind Mishra appearing on behalf of the respondents

on the Interlocutory Application No.3118 of 2015 filed in

C.W.J.C. No.5842 of 2015.

2. At the time of hearing of this interlocutory application

the learned counsels submitted that these writ applications may

also be heard on merit in admission matter and accordingly, I

heard the parties on merit in admission matter also.

3. It will be better to decide the matter relating to C.W.J.C. No.13066 of 2014 first.

4. This writ application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 25.06.1992 passed by the Subordinate Judge-1, Ara in Letters of Administration Case No.11 of 1991 and order dated 03.06.2014 passed by District Judge, Bhojpur, Ara in Miscellaneous Case No.100 of 2013 whereby the court below dismissed the miscellaneous case filed by the petitioner.

5. It appears that the petitioner filed the aforesaid probate case under section 278 of the Indian Succession Act for grant of Letters of Administration with respect to the property subject matter of the Will. The present respondents appeared and filed caveat-cum-objection to the said Letters of Administration case in the year 1992 itself. The court below finding that the respondents are contesting the Letters of Administration case converted probate case into title suit in view of the provision as contained in Section 295 of the Indian Succession Act. Thereafter the petitioner filed miscellaneous case before the District Judge for deciding the locus of the respondents to contest the letters of administration case. By the impugned order dated 03.06.2014 the said miscellaneous case has been dismissed. The petitioner has

challenged the original order whereby the proceeding was converted to title suit as well as the order whereby miscellaneous case has been rejected.

6. During the pendency of this writ application the petitioner filed application before the court below for stay of further proceeding but the court below rejected the said application by terms of order dated 09.10.2014. Therefore, the petitioner filed the other writ application being C.W.J.C. No.5842 of 2015.

7. From perusal of the impugned order, it becomes clear that it is admitted fact that the respondents on the basis of mahadanama filed Title Suit No.234 of 1987 which was for specific performance of contract. The said suit was decreed and thereafter the registered sale deed was executed in favour of respondents herein. The court below found that in such view of the matter it cannot be said that the respondents have got no caveatable interest in the property which is covered by the alleged Will. The only objection of the petitioner is that the court below without deciding the caveatable interest converted the proceeding to title suit and the District Judge also without deciding the caveatable interest of the respondents has rejected the miscellaneous case.

8. So far the above position that the respondents have already purchased the property prior to filing of the probate case on the basis of the decree passed in the aforesaid Title Suit No.234 of 1987 is concerned, it cannot be said that they have got no caveatable interest to object the probate case filed by the petitioner. So far the ground that the caveat is not in the form and that caveat should have been filed separately is concerned, it is only technical matter. Therefore, in my opinion the court below has rightly converted the probate case to title suit and rightly rejected the miscellaneous case. So far the subsequent writ application i.e. C.W.J.C. No.5842 of 2015 is concerned, since C.W.J.C. No.13066 of 2014 has got no merit, I find that this writ application has also got no merit and accordingly, both the writ applications are hereby dismissed and consequently the interlocutory application is rejected.

(Mungeshwar Sahoo, J)

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