

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.199 of 2012

Ashok Kumar Chopra, son of late Mangal Sen Chopra, resident of Radha Bhawan,
3rd Floor, Exhibition Road, behind Vikram Hotel, P.S.-Gandhi Maidan, Patna-1.

.... Appellant

Versus

1. Srimati Babita Chopra, wife of Sri Pankaj Kumar Chopra, resident of village-Silao, P.O. and P.S.-Silao, District- Nalanda.

..... Legatee.....respondent 1st Set

2. Pankaj Kumar Chopra, son of Mangal Sen Chopra, resident of village-Silao, P.O. and P.S.-Silao, District- Nalanda.

.... Executor.... Respondent 2nd Set

Appearance :

For the Appellant/s : Mr. T. N. Maitin, Sr. Advocate
Mr. Viond Shankar Modi, Advocate

For the Respondents : Mr. Gaurang Chatterjee, Advocate
Mr. Suresh Mishra, Advocate
Mr. Rajnikant Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 13-02-2015

Heard the parties.

2. This is an Appeal preferred against order dated 16th January 2008 passed by 4th Additional District Judge, Nalanda at Biharsharif in L.A. No. 1/1995 and 1/2007 granting letter of administration.

3. The appellant being one of the near relatives of the testator appeared objected the prayer made in L.A. Initially, the

court after hearing on some technical issues dismissed the application vide order dated 10th December 1996 giving rise to M.A. No. 34 of 1997 preferred by the applicant respondent which was allowed vide order dated 30.04.1998 and matter was remitted for fresh decision on merit.

4. It appears from the record of the Court below that nothing could be done in the matter since records were not available but already deposited in record room. However, on the prayer of applicant respondent in the year 2003 record was received from the record room and order was passed to intimate learned counsels representing opposite parties. One of the counsel made endorsement on 1st August 2003 as on no instruction another one simply sent the ordersheet but there was no steps taken by either on the side for several dates. Again on the prayer of applicant respondent on 5th February 2004 court below instructed ordersheet to be sent fixing date of further hearing. On the date so fixed i.e. 12th February 2004, it appears that counsels representing both the sides were present but prayer of adjournment was made on behalf of opposite party. Similar was the stage on 17th February 2004 when PW-2, Mahesh Prasad had examined and independently cross-examined. The petition for time filed on behalf of defendant indicates the counsel

though made an attempt to contact his client i.e. the appellant here but fail. However, for further cross-examination matter was deferred and when on two consecutive dates none on behalf of the defendants appeared he was discharged and in similar fashion another witness produced on behalf of the applicant discharged without cross-examination.

5. One Rajrani filed a petition under Order 1 Rule 10 CPC on 1st April 2004 and simultaneously petition was filed under signature of a counsel said to be representing the appellant to cross-examine the two witnesses discharged without cross-examination but except getting the application on record nothing could be done and the petition filed on behalf of the intervener subsequently was rejected on 27th July 2006 and some more witness appears examined and discharged on subsequent dates but said Rajrani filed another petition on 8th September 2006 which too after hearing dismissed on 31st January 2007 giving rise to Civil Revision No.333 of 2007 which was disposed of on 13.03.2007. However, some more witnesses were examined and discharged.

6. While all such things were going on, wife of the appellant Mina Chopra also unsuccessfully intervened and her prayer was turned down on a detailed order dated 3rd October 2007



wherein in spite of other things it has also appears find consideration that her husband had left taking any step. Subsequently, when after hearing the parties on record matter was posted for final order one prayer appears made by the present appellant on 7th January 2008 seeking permission to cross-examination of the witnesses already examined and discharged but nothing could not be done except final order passed on the date fixed since before i.e. 16th January 2008 giving rise to present Appeal.

7. The facts and circumstances indicated above are indicatives of the things that the appellant in spite of endorsement of a counsel having no instruction was at no point of time given any notice but at the same time this also cannot be ignored that one of the main objections on behalf of the present appellant against the Will in question is that it was not last Will of the testator if at all voluntarily executed by her and there is a Will in favour of wife of the appellant Smt. Mina Chopra, who with almost same plea tried to intervene but fail. It is further alleges towards an opinion that some how or the other, the appellant in spite of having knowledge of all developments tried to put hindrance in early disposal of the matter in granting of letter of administration etc. in favour of the applicant

respondent.

8. In view of the above, the appellant though deserves heavy penalty for fictitious litigation and filing present appeal but at the same time earlier petition filed on his behalf praying to recall two witness no. 2 and 3 examined on behalf of the applicant respondent are still pending disposal except getting the same on record there is no further order gives him a room for having one more opportunity to contest and place whatever he want in accordance with law to oppose the prayer of the applicant respondent.

9. On consideration of the facts and circumstances stated above order impugned is hereby set aside.

10 Accordingly, the Appeal is allowed but subject to payment of cost of Rs.25,000/- (twenty five thousand) within a month from the date of communication/receipt of the order, half of which shall be deposited with the District Legal Services Authority, Nalanda at Biharshar and rest shall be paid to the plaintiff respondent.

11. The Court below, on such deposit, is to ensure disposal of the case within a period of three months from the date of production/receipt of a copy of this order. In the event, either of the

side avoids appearance without any reason may be treated with iron hands and the court must not hesitate to pass any adverse order against such party. Further, all concerned here are directed to appear before the Court below on 9th March 2015.

11. Registry is directed to ensure transmission of LCR along with copy of this order immediately.

(Akhilesh Chandra, J)

Ashwini/-

U			
---	--	--	--