

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5856 of 2011

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Surendra Singh, son of late Ram Kishun Singh @ Kishun Singh, resident of village Shahwajpur Chhotiya, P.S.- Khizersarai, District-Gaya.

.... Petitioner/s

Versus

Kamta Prasad Sharma, son of Late Yamuna Singh, resident of village Shahwajpur Chhotiya, P.S.- Khizersarai, District-Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MRIGENDRA KUMAR

For the Respondent/s : Mr. Binay Kumar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 19-08-2015

Heard Mr. Mrigendra Kumar for the petitioner and Mr. Binay Kumar for the respondent.

Writ petitioner filed a caveat in Probate proceeding vide Probate Case No. 6 of 2010/17 of 2004 under Section 284 of the Indian Succession Act (for short 'the Act') for impleadment entitling him a citation of the proceeding as required under section 283(1)(c) of the Act. The same has been rejected by the Court below by order dated 20.12.2010.

Section 283(1)(c) of the Act deals with the power of the District Judge or District Delegate. Sub-section (1)(c) thereof reads as under:

“284(1)(a) xxxx.

(b) xxxxx

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.”

The Court below has rejected the prayer on the ground that the

appellant had no *bona fide* or lawful interest in the suit property covered by the Will executed by Late Jagat Devi.

The respondent filed the probate proceeding for grant of probate stating that out of love and affection, Jagat Devi executed the Will of her estate in his favour. He impleaded Hardeo Singh and Laldeo Singh as the next kith and kin of Permanand Singh. A joint objection was filed therein by those two persons impleaded in the said proceeding stating that Late Parmanand Singh from whom the testator claimed to have derived interest in the property covered by the Will had executed a conditional sale in favour of the writ petitioner. A suit was filed by the petitioner in which a decree was drawn by the Lok Adalat on compromise between the parties. Those two persons have already died. The petitioner, in such circumstance, filed a caveat under Section 284 of the Act for being impleaded party to the said proceeding entitling him to a citation as provided under the Act which was rejected.

The counsel for the petitioner submitted that anyone having interest in the property covered by the Will can challenge the genuineness of the Will. Of course, title of the testator shall not be enquired into or adjudicated upon but the genuineness thereof can always be questioned by one having interest in the property. By virtue of conditional sale effected in his favour by Late Parmanand Singh through whom the testator derived title and interest in the suit property covered by the Will, the petitioner has a legitimate interest in

the estate of the deceased. The Court below completely failed to appreciate this aspect of the matter and instead ventured to decide the correctness or otherwise of the conditional sale or the decree/award which was passed by the Court/Lok Adalat on the basis of said conditional sale in T.S. No. 48 of 2004.

Counsel for the respondent, on the other hand, supported the impugned order. He argued that no document was produced by the petitioner in support of the contention.

The Act conceives impleadment of all persons having interest in the estate of the deceased. Section 283(1)(c) on which reliance has been placed by the petitioner is a clear pointer.

In *Kalika Singh and Anr vs. Awadhesh Narayan Singh 1993*

BLJ 212, the Court observed as under in paragraphs 6 and 7:

“6. It is a settled law that a probate court has no jurisdiction to decide about the question of title between the parties. It can be decided in a regular suit. The authority of the probate court is required to see as to whether the will is genuine or not. Under Section 283(1)(c) of the Indian Succession Act, 1925 (hereinafter referred to as the Act) it is provided that the District Judge shall issue citations calling upon all persons claiming to have interest in the estate of the deceased. Filed, J. In Nabeen Chunder Sil and Ors vs. Bhobosoonduri Dabee, (ILR VI Calcutta 460) has held as follows at page 470:

“What is the meaning of the expression ‘persons claiming to have any interest?’ It appears to me that the persons claiming to have any interest’ must be persons having such an interest as would entitle them to maintain a suit in respect of the subject-matter of such estate-persons having, for example, such an interest as, according to the practice of the Court of Chancery, would entitle them to file a bill in a court of Equity;.....”

This decision of the Calcutta High Court was approved by this Court in the goods of the Estate of Mrs. Elsie Augusts Black, R.S. Sinha v. Miss Salera Hector, (A.I.R. 1941 Patna 151).

7. On a perusal of these decisions it is clear that a person who can maintain a suit in respect of the property of the testator is a person having interest in the estate of the deceased. Therefore, such a person can object to the grant of probate and can enter as a caveator in the probate proceeding. If such a person raised objection about the validity of the title of the testator to execute a will, such challenge cannot be made in a probate proceeding. Such issue will be tried in a suit. But it does not mean that he will have no *locus standi* to object the proceeding. He will have the *locus standi* provided he challenges the genuineness of the will on the grounds other than title. It is the duty of the court to disengage the chaff from the gain. Suppose a person having interest in the property of the deceased, challenge the will on two grounds namely, (i) that the testator was not competent to execute the will as he had no right in the subject-matter of the probate proceeding, and (ii) that the will was a forged document or was not a genuine document; the court will try and decide issue no. 2 and will not try issue no. 1.”

It is deduced therefrom that persons having slightest interest in the property governed by a Will is entitled to enter caveat which the Court should allow. Viewing the order in this light, this Court finds a serious legal flaw in the order having vitiating effect.

In the result, the application is allowed. The order dated 20.12.2010 passed in Probate Case no. 6 of 2010/17 of 2004 is set aside.

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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