

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.122 of 2011

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Kaushalya Devi @ Kaushalya Ray, D/O of late Kashi Nath Ray, wife of Sri Baban Ray, resident of Village Ban Ke Baherara, P.O. Mahila, P.S. Kudhani, District Kaimur (Bhabhua)

.... Appellant/s

Versus

Ashok Kumar Ray, son of Sri Brij Narain Ray, resident of Village Ban Ke Bahurara, P.O. Mahila, P.S. Kudhani, District- Kaimur (Bhabua)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. BRIJ MOHAN KUMAR SINGH, Advocate.

For the Respondent/s : Mr. Shashi Kuamr,
Mr. Ravi Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-10-2015

Heard learned counsel for the appellant and learned counsel for the respondent.

In the present appeal the appellant is challenging the judgment and order dated 27.12.2005 passed in T.S. No.3 of 2004/4 of 2005 arising out of Probate Case No.32 of 2003 by the Additional District Judge, Fast Track Court No.4, Bhabhua by which suit has been allowed in favour of the respondent by granting probate in his favour.

This Court avers only necessary fact for disposal of this appeal. Kashi Nath Ray happens to be Uncle of Ashok Kumar Ray and Kashi Nath Ray allegedly executed a Will on 12.12.2001 and after the death, the probate case was filed and same was registered as Probate Case No. 32 of 2003. On

appearance of the other side it was converted into T.S. No.3 of 2004/ 4 of 2005. The objector is the daughter of Kashi Nath Ray which has been disputed by Ashok Kumar Ray plaintiff.

The appellant-defendant filed caveat, objection and written statement but even then being a lady she asked one of the relative Jang Bahadur Singh to hand over the case to an advocate to conduct the case on her behalf accordingly record was handed over but he has not taken proper step in the case as has been alleged that he connived with Ashok Kumar Ray, legatee resultantly the case was decided ex-parte in favour of the respondent. He has further submitted that the Will is completely a forged Will. No provision has been made in the Will for his wife and for Kaushlaya Devi daughter The testament is completely unnatural as close heir has been deprived of the benefit from the estate of deceased which creates strong suspicious circumstance is required to be removed by the plaintiff. Wife and daughters are in the line of succession when they are deprived, there must be strong explanation. Respondent is disputing relationship of appellant to be the daughter of Kashi Nath Ray but there is no dispute that on the day of execution of the Will wife was alive. As this Court is not dealing with the merit of the case the appellant has been deprived to raise her

grievance.

Learned counsel for the respondent has submitted that Kashi Nath Ray has executed the Will while he was in sound mind and after going through the recital of the Will he has put his signature, qualifies the test as provided under Section 63 of the Succession Act and Section 68 of the Evidence Act.

Having considered the rival contentions of parties as it appears that case has been decided ex-parte without consideration of the point raised by the appellant who is claimed to be the daughter of Kashi Nath Ray it will be in the ends of justice that the matter would be remanded back to the court below and court below after giving sufficient opportunity to the parties will decide the case on its merit.

Accordingly judgment and order dated 27.12.2005 is set aside and this appeal is allowed.

Office is directed to remit the lower court records to the court below forthwith.

(Shivaji Pandey, J)

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