

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.284 of 2016

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Smt. Shanti Devi

.... Appellant/s

Versus

Saroj Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 16-11-2016 1. Heard the learned counsel, Mr. Sandeep Kumar, for the petitioner and the learned counsel, Mr. Vishwajeet Kumar Mishra, for the respondent.
2. Perused the impugned order dated 22.04.2016 passed by ADJ-II Bagha in Probate Case No.34 of 2004 whereby the learned Court below rejected the application filed by the petitioner for appointment of Advocate commissioner for examining the petitioner and her husband on commission as witness in the probate case.
3. The grievance of the petitioner is that many documents have been produced before the Court below showing the illness of the petitioner as well as her husband which relates to heart diseases and the documents have been issued by the Doctors in Delhi such as Doctors of AIIMS, Life Line Laboratory, Ram

Manohar Lohia Hospital, New Delhi and other various private doctors. The Court below in one line held that the documents relates to blood pressure, gas etc. which are common problem. According to the learned counsel, the Court below has not even looked into any of the documents produced by the petitioner.

4. On the other hand, the learned counsel for the respondent submitted that all the documenters are created documents and all the documents were not produced before the Court below. Whatever documents were produced, those documents have been considered.

5. A supplementary affidavit has been filed by the petitioner before this Court and according to the learned counsel for the petitioner, these documenters were produced before the Court below. From perusal of the documents, it appears that the prescription and test reports have been issued by various doctors on various hospitals and even by various hospitals in Delhi. The Court below without considering the documents has held that these documents relates to gas and blood pressure. In my opinion, this finding recorded by the Court below is perverse.

6. I, therefore, find that the order passed by the Court below is not according to law as such it is unsustainable in the eye

of law.

7. In the result, this Civil Misc. application is allowed. The impugned order is set aside and the mater is remanded back to the Court below for passing a fresh order according to law after hearing both the parties and considering the documents which have been filed or which may be produced by the parties.

(Mungeshwar Sahoo, J)

Sanjeev/-

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