

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.78 of 2012

=====

1. RAMA SHANKAR TIWARI S/O RADHA KRISHNA TIWARI R/O VILL TIWARI DIH,
P.O.AKORHI GOLA, DISTT-ROHTAS, PRESENTLY RESIDENT OF MOHALLA-IDHGAH,
DEHRI-ON-SONE, P.O.DEHRI, DISTT-ROHTAS

.... APPELLANT/S

VERSUS

1. SNEH LATA PANDEY D/O BASHUDEO TIWARI R/O MOH IDHGAH, DEHRI ON SONE ,
P.O.DEHRI, DISTT-ROHTAS
2. SONA KUER D/O BASHUDEO TIWARI R/O MOH IDHGAH, DEHRI ON SONE ,
P.O.DEHRI, DISTT-ROHTAS
3. SHANTI DEVI D/O BASHUDEO TIWARI R/O MOH IDHGAH, DEHRI ON SONE,
P.O.DEHRI, DISTT-ROHTAS

.... RESPONDENT/S

Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi-Sr. Advocate
 Mr. Ranjan Kumar Dubey-Advocate
 Mr. Rakesh Chandra-Advocate
For the Respondent/s : Mr. Raghunandan Kumar Singh-Advocate
 Mr. Upadhyay Saurabh Kumar-Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 05-04-2016

Heard learned counsel for the appellant as well as
learned counsel for the respondents.

2. Instant appeal has been filed in accordance with
Section 299 of the Indian Succession Act against an order dated
21.12.2011 passed by the Additional District Judge-Vth, Rohtas at
Sasaram in Civil Misc. (Revocation) Case No.04 of 2011 whereby
and whereunder the learned lower Court had revoked the order dated
07.09.2010 passed in Civil Misc. (Probate) Case No.33 of 2010
whereby and whereunder letter of administration was granted in
favour of appellant/ opposite party/ applicant.



3. In order to properly appreciate the lis, there was one Basudeo Tiwary, who had executed unregistered Will on 15.09.1983 in favour of appellant/ opposite party/ applicant Rama Shankar Tiwary, cousin brother's son (nephew). The aforesaid testator Basudeo Tiwary died on 16.04.1985. On account of some sort of privilege having in favour of testator's wife, who survived upto 2001, appellant/ opposite party/ applicant filed petition for grant of letter of administration after her death whereupon Civil Misc. (Probate) Case No.33 of 2010 was drawn up and as there was no contest, hence vide order dated 07.09.2010, petition was allowed and in pursuance thereof, vide order dated 20.09.2010, letter of administration relating to Will dated 15.09.1983 executed by testator, Basudeo Tiwary (since deceased) was issued in favour of appellant/ opposite party/ applicant Rama Shankar Tiwari. Subsequently thereof, the three daughters of Late Basudeo Tiwary, testator of the Will dated 15.09.1983 filed petition under the guise of Section 263 of the Indian Succession Act for revocation of order dated 07.09.2010 passed in Civil Misc. (Probate) Case No.33 of 2010 whereupon notice was issued and after appearance of the appellant, objection was filed and then, admitting evidence on behalf of respective parties by the order impugned revoked order dated 07.09.2010, hence this appeal.

4. Manifold argument has been raised on behalf of



learned counsel for the appellant in order to challenge the judgment impugned. The first and foremost ground has been urged on behalf of learned counsel for the appellant that conduct of the parties should be perceived at a glance. The Will was executed in the year 1983 whereunder testator had made certain provisions relating to his wife which the wife continued to avail till her death allowing the appellant to be custodian of the Will in question without any hitch and hindrance. Furthermore, during course thereof, the respondents have got frequent visit and were known to the aforesaid event. Allowing the appellant to act in terms of Will, uninterruptedly at their end is suggestive of the fact that they have virtually allowed the appellant to avail usufruct in terms of Will dated 15.09.1983 with regard to the properties belonging to their father Basudeo Tiwary (Testator).

5. It has also been submitted that filing of petition for revocation of grant of letter of administration has got no relevancy in the facts and circumstances of the case and in likewise manner, the mandate of law governing citation, because of the fact that daughters were fully known to the aforesaid event much before filing of the petition and therefore, revocation of order dated 07.09.2010 in absence of citation happens to be mere a technical flaw which could not be allowed to persist in the background of aforesaid facts.

6. It has further been submitted that deficiency on the



score of individual citation, as held by the learned lower Court loses its sanctity, because of the fact that the general citation was made and further, apart from other places, it was also served at the village itself. As the daughters have got their frequent visit and even today though they are on litigating term, but maintained their relationship, therefore, on that score also, the daughters have no to say. Furthermore, by their appearance at village, there was every possibility to perceive the news with regard to filing of a petition for grant of letter of administration with regard to Will executed by testator Basudeo Tiwary, since deceased, which had completely been overlooked by the learned lower Court.

7. It has also been submitted that natural conduct of daughters should be perceived even at the present moment who are contesting tooth to nail to nullify the last Will of their deceased father and this conduct, approach of the daughters really frustrated the deceased which, the deceased himself confronted and incorporated while executing the Will, which prompted the deceased to execute Will in favour of appellant to avoid further complications, which, the deceased was expecting from his daughters. So, in the totality of the event, it has been submitted that the judgment and order of the learned lower Court happens to be cryptic, perverse and is fit to be set aside.

8. While controverting the submission advanced on



behalf of learned counsel for the appellant, it has been submitted on behalf of learned counsel for the respondents that the judgment and order passed by the learned lower Court happens to be legal, just, proper and so, did not attract interference. It has further been submitted that so many grounds have been enumerated under Section 263 of the Indian Succession Act which prescribes a provision for revocation and one of the grounds happens to be over absence of citation, illustration (2) thereof, further specify the same. In the aforesaid background, it has been submitted that the petition filed by the appellant relating to Civil Misc. (Probate) Case No.33 of 2010 suffers from inherent lacuna, infirmities which had rightly been perceived by the learned lower Court and on the basis thereof, revocation of the Will is legally maintainable. Therefore, instant appeal lacks merit.

9. There happens to be no controversy with regard to grounds so enumerated under Section 263 of the Indian Succession Act permitting revocation and one of the grounds happens to be absence of citation. The judgment and order impugned deals with the aforesaid theme only. In order to scrutinize the finding recorded by the learned lower Court, the original petition of Civil Misc. (Probate) Case No.33 of 2010 has been gone through wherefrom it is evident that in Para-6 of the petition only presence of three daughters have

been shown without disclosing their names as well as full address (at present or permanent). In absence thereof, really personal service would have been effected as contended on behalf of learned counsel for the appellant is a matter of concern which, ultimately frustrate the submission made on behalf of learned counsel for the appellant. Record did not speak with regard to identification of three daughters of testator Late Basudeo Tiwary by name and further, any requisite for issuance of notice against them to be available on the record.

10. That being so, the judgment and order impugned did not require interference. Consequent thereupon, instant appeal is dismissed. However, in the facts and circumstances of the case, the parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-05.04.2016
Vikash/-

U			
---	--	--	--