

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12787 of 2014

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Sudhir Kumar, son of late Ram Nandan Singh, resident of D.N. Singh Memorial Trust Bhavan 59, D. Sri Krishnapuri, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Registrar Civil Court, Patna-1.
2. The Secretary, Law Department, Bihar, Patna.
3. Ram Subhag Singh, son of late Janki Singh, resident of Jalkadder Bagh, P.S. Malsalami, District-Patna power of attorney holder of Krishna Kumar son of Late Rama Nandan Singh, resident of Jalkaddar Bagh Patna City-2, present 26 2A Ashmant Terrace, Silver Spring MD-20906 U.S.A.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nageshwar Prasad Sinha, Adv.

For the Respondent No-3 : Mr. Subodh Kumar Jha, Adv.

Mr. Pranav Kumar Jha, Adv.

Mr. Krishna Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-09-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

The present application has been filed questioning the legal sustainability of the impugned order by which the learned court below has called for the records of marriage from the concerned institution.

Learned counsel for the petitioner has submitted that a probate court has no jurisdiction to determine the validity of marriage as the said issue is alien to the proceeding. It has been contended that



in view of Section 59 and 63 of the Evidence Act the court is to consider and grant or refuse the probate after determining the genuineness of the will and no other question can be investigated. It has been submitted, therefore, that the learned court below has committed error in law in calling for the concerned documents.

Learned counsel for the respondents has submitted that this application has now become infructuous as the records which were called for by the learned court below by the impugned order had already been received and perused by the learned court below and thereafter also returned to the concerned institution.

After considering the submissions and the materials on record, it is manifest that the petitioner has filed a petition for grant of probate of will. The said will is said to have been executed by one Prabhawati Devi. The learned court below while considering the contention of the petitioner that the question of marriage cannot be decided by a probate court, however, has recorded in the impugned order that the purpose for calling for those records relating to the marriage is only to find out whether the will in question was executed prior to the marriage or after the marriage. It has also been observed by the learned court below in the impugned order that the purpose of calling for those records was not to decide the right, title and interest of the parties or the validity of the marriage. This Court is of the



opinion that the learned court below has committed no error of jurisdiction or material irregularity in any manner as any question which may be related to the genuineness of the will or has some bearing on the said issue can be investigated by a court while considering the prayer for grant of probate. In the impugned order, the learned court below has demonstrably stated that the records of the marriage has been called for only for the purpose of ascertaining as to whether the will in question was executed prior to the marriage or after marriage. The said question might have bearing upon the genuineness of the said will. However, this Court does not express any opinion on this question. This Court finds no perversity or unreasonableness in the impugned order and, therefore, is not inclined to interdict the impugned order by invoking the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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