

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.181 of 2006

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Shanti Devi, D/O Late Jhinghur Mahto and W/O Late Moti Ram Mahto
resident of Village- Dhobinia, P.S. Malangma, District- Sarhahi (Nepal) at
present residing at Village- Basbitha Tole, Srinagar, P.S. Majorganj,
District-Sitamarhi.

.... Appellant/s

Versus

1. Nand Kishore Mahto
2. Hari Kishore Mahto
3. Jai Kishore Mahto, All sons of Late Ram Prasad Mahto.
4. Mostt. Kushmi Devi W/O Late Indrajeet Mahto
5. Dev Nandan Mahto
6. Manoj Kumar, All sons of Late Indra Jeet Mahto.
7. Raj Kumar Mahto S/O Late Sundar Jeet Mahto
8. Smt. Urmila Devi
9. Smt. Nirmala Devi, all daughters of Late Indra Jeet Mahto
10. Smt. Shail Devi
11. Smt. Asha Devi, Respondent nos. 1 to 11 all are of village- Basbitta,
Tole Sri Nagar, P.S. Majorganj, District Sitamarhi.
12. Jamuna Mahto
13. Siyaram Mahto, both sons of Late Bhagirath Mahto
14. Pukari Devi
15. Bachhi Devi
16. Sagar Devi
17. Aagar Devi, All daughters of Late Bhagirath Mahto. Respondent nos. 12
to 17 all are of village Kharki Madhopur, P.S. Pipra, District- Rothat
(Nepal) at present of village Basbitta Tole Srinagar, P.S. Majorganj,
District- Sitamarhi.
18. Brichhlal Mahto son of Pano Devi Widow of Late Ramashish Mahto
19. Premlal Mahto
20. Ragu Mahto
21. Binod Mahto, all grand sons of late Pano Devi W/O Late Ramashish
Mahto.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nirmal Kumar Sinha No-3
Mr. Arun Kumar

For the Respondent/s : Mr. Md.Hussamuddin Azad
Mr. Hanas Lal Kumar
Mr. Jagdish Prasad-1
Mr. Rakesh Ambastha
Mr. Shankar Kumar

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

21 29-08-2016

I.A. No. 4143 of 2016 and I.A. No. 4211 of 2016 have been filed on behalf of the appellant.

Heard Sri Kripanand Jha, the learned counsel for the appellant, Sri Arun Kumar, learned counsel for respondent nos. 2 and 3 and Sri Yogendra Prasad Sinha, the learned counsel on behalf of respondent no.12.

I.A. No. 4143 of 2016 has been filed with the fresh Vakalatnama of the appellant Shanti Devi with a prayer to accept the same. It is submitted that she is an old lady of 73 years and she does not want to pursue this appeal and she has relinquished her claim against all the respondents and for that she visited her conducting lawyer along with her son and sister's son and requested him to withdraw this appeal but he refused to withdraw the appeal and further she asked him for no objection which was also refused and as such fresh Vakalatnama has been filed and prayer has been made to accept the same.

During course of argument it is submitted that Sri Nirmal Kumar Sinha, No.3 and Sri Arun Kumar, Advocates are working in the office of Sri Yogendra Prasad Sinha who is pressing I.A. Nos. 4888 of 2016 and 4889 of 2016 and as such under the peculiar circumstances the Vakalatnama executed by the sole appellant in favour of Sri Kripanand Jha be accepted. Along

with the said I.A. affidavits of Shiv Shankar Mahto and Rajendra Mahto have been filed wherein both have stated that Sri Nirmal Kumar Sinha, No.3 refused to withdraw this appeal and further refused to give no objection certificate.

Under the circumstances, the Vakalatnama filed on behalf of Shanti Devi in favour of Sri Kripanand Jha, Advocate is hereby accepted and I.A. No. 4143 of 2016 stands allowed.

I.A. No. 4211 of 2016.

The instant I.A. has been filed under Order- XXIII, Rule-1 of the C.P.C. for withdrawal of the appeal on the ground that the sole appellant has contested Probate Case No. 1/1977/3/2005 relating to will dated 24.09.1971 executed by Shri Jhinghur Mahto and after contest letter of Administration/Probate was granted by the learned court below. This appellant filed the present appeal challenging the order passed by the learned trial court but subsequently the appellant on repeated examination of the will as well as the judgment of the learned trial court has come to a definite conclusion that the said will dated 24.09.1971 is executed by the testator Late Jhinghur Mahto which is a genuine will and is duly executed by the said testator and then she along with her son, namely, Shiv Shankar Prasad Mahto and the sister's son, namely, Rajendra Mahto requested Sri Nirmal Kumar Sinha,

No.3, Advocate to withdraw this appeal but he refused and also refused to give no objection certificate. It is submitted that the decision to withdraw the appeal is without any influence or coercion from any corner. This decision has been taken by the sole appellant out of her own free will.

Sri Kripanand Jha, the learned counsel, submits that withdrawal of the appeal is in the interest of the appellant as by continuing this appeal no fruitful purpose is going to be served and it amount to wastage of money. The learned counsel for respondent nos. 2 and 3 also does not oppose the aforesaid submission, whereas, the learned counsel for respondent no. 12 opposes the aforesaid submission and submits that this withdrawal petition has been filed under the influence and coercion. The son of the appellant Shanti Devi has filed Complaint case in the court of the C.J.M. Sitamarhi for kidnapping her mother Shanti Devi but later on Hari Shankar Mahto went in collusion of respondent nos. 2 and 3 and withdrew the said complaint case.

In the facts and circumstances stated above and considering that no party can be forced to continue with the case against his or her wishes and as the appellant Shanti Devi does not want to pursue the appeal and has filed petition to withdraw the same and as such withdrawal petition is hereby allowed and the

appeal filed by Shanti Devi is hereby dismissed as withdrawn.

Accordingly, I.A. No. 4211 of 2016 is hereby allowed.

I.A. No. 4121 of 2016.

The instant I.A. has been filed under Order 10 Rule (2) read with section 151 of the C.P.C. on behalf of the intervener petitioner, namely, Hari Shankar Mahto praying therein to make the petitioner as appellant no.2 in this appeal to prosecute the case properly but not turned up to press this appeal and it is submitted that Hari Shankar Mahto also does not want to continue with the appeal and to press the instant I.A.

Accordingly, I.A. No. 4121 of 2016 is also hereby dismissed as not pressed.

I.A. No. 4888 of 2016.

The instant I.A. has been filed on behalf of Jamun Mahto, respondent no.12, stating therein that he has got interest in this appeal as there is question of forged and fabricated document, none of the daughters of Late Jhingur Mahto was made party in the aforesaid probate case. On behalf of daughters of Late Jhingur Mahto an application was filed to make them party which was not accepted resulting civil revision was filed wherein by this Court they have been made party but the order reached at the court



below after final order passed in the probate case on 29.08.2006 resulting Shanti Devi has preferred this First Appeal making the petitioner as respondent no.12. Shanti Devi is 90 years old and she lost power of understanding. She was kidnapped also but the complainant went in collusion of respondent nos. 2 and 3 and as such for the ends of justice the respondent no.12 be transposed as the appellant so that interest of the parties may be saved.

By filing rejoinder against the instant I.A. on behalf of respondent nos. 2 and 3 it has been submitted that wrong statement has been made. The order passed by this Court in Civil Revision No. 1677 of 1993 was received in the court below on 12.12.1995 and not on 29.08.2006 as submitted in paragraph-3 of the interlocutory application no. 4888 of 2016, but inspite of that no one contested the said probate case except Shanti Devi and as such now the respondent no.12 is also debarred from contesting this appeal and I.A. No. 4888 of 2016 is fit to be rejected. On behalf of appellant Shanti Devi also it is submitted that this petition has been filed only with a view to delay the case and to linger the matter though neither on his behalf written statement was filed nor any evidence was adduced. Only Shanti Devi contested the probate case and as such respondent no.12 has got no locus standi to be transposed as the appellant.

Sri Yogendra Prasad Sinha, the learned counsel, on the other hand submits that the Will in question is out and out forged and fabricated document and the respondent no.12 wants to challenge the same and as such he should be transposed as the appellant.

Having considered the submissions aforesaid and after going through the record and noticing that no appeal was filed by any one except Shanti Devi and further as submitted in the rejoinder of this I.A. no written statement was filed on behalf of respondent no.12 or any evidence was adduced on his behalf and as such, in my opinion, respondent no.12 is not entitled to be transposed as the appellant in this appeal and accordingly, I.A. No.4888 of 2016 stands rejected.

I.A. No. 4889 of 2016.

The instant I.A. has been filed on behalf of the intervener applicant Ram Dulari Devi to be made as the appellant in this appeal on the ground that the Will in question is out and out forged and fabricated document. Shanti Devi sold an area of 5.97 decimals and Pano Devi sold an area of 5.98 decimals through registered sale deeds in favour of this intervener petitioner and as such she being the necessary party should be impleaded as the intervener appellant. Against this I.A. rejoinder has been filed on



behalf of respondent nos. 2 and 3 stating therein that this interlocutory application is not maintainable and it has been filed only when the appellant wanted to withdraw this appeal. The intervener, as alleged, has purchased in the year 1985 but she never came earlier to be impleaded as party and as such the petition is absolutely time barred. Further, she has not filed any appeal within 90 days of the judgment passed in Probate case. In paragraph 4 of I.A. No. 4889 of 2016 confusing statement has been made which shows misleading attitude of the intervener. In fact, Shanti Devi and her all four sisters were added as respondents in the probate case vide order dated 12.12.1995 but only Shanti Devi contested the probate case and others did not contest. In this appeal Ram Dulari Devi has got no right to contest the appeal and her petition is based on wrong statements. In paragraph-8 also wrong facts have been mentioned. As a matter of fact, complaint case bearing Complaint Case No. 1602 of 2016 is not pending rather the same was withdrawn vide petition dated 27.05.2016 and vide order dated 30.05.2016. Further, it is wrong to say that Shanti Devi is aged 90 years rather she is aged 73 years.

Sri Yogendra Prasad Sinha, on the other hand, submits that for the ends of justice Ram Dulari Devi be added as

intervener appellant because she has purchased the property under registered sale deed dated 12.01.1985 from Shanti Devi and others but now Shanti Devi has gone in collusion with respondent nos. 2 and 3 and as such she should be made intervener appellant.

Having considered the aforesaid submissions, I am of the opinion that Ram Dulari Devi after the said sale deed dated 12.01.1985 has not appeared before the learned court below nor filed any appeal against the said judgment and after more than 12 years now she cannot be allowed to be impleaded as intervener appellant in this appeal. Accordingly, the instant I.A. being devoid of merit also stands rejected.

In the result, this First Appeal is hereby dismissed as withdrawn.

(Jitendra Mohan Sharma, J)

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