

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.112 of 2013

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Ravi Shankar Singh	Versus	 Appellant
Bhanumati Devi		 Respondent

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Appearance :

For the Appellant/s : Mr. Din Bandhu Singh, Advocate
Mr. Santosh Kumar, Advocate
For the Respondent/s : Mr. Kali Prasanna Dubey, Advocate
Mr. Raj bansh Dubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 06-09-2016 The instant Miscellaneous Appeal has been filed against the order dated 02.06.2009 passed in Probate Revocation Case No. 49 of 1999 in the matter of Bhanumati Devi Vs. Ravi Shankar Singh by learned Sub-Judge I, Kaimur whereby and whereunder the Revocation of Probate was allowed and probate granted was revoked on the ground that Bhanumati Devi was a necessary party and she was not made party and further general citation was also not validly done which is evident from evidence of O. W. 5, paragraph 6, wherein O.W. 5 Kharpatu Ram has admitted that when he started beating the drum, there were only 3-4 persons and all were children, besides that there was none and further no one has come from outside and on that ground the probate granted to O. P. Ravi Shankar Singh was revoked and Probate Case No. 56 of 1998 was restored to its original file and number for further steps.

On behalf of appellant it is submitted that Bhanumati Devi



was not necessary party and general citation was done legally and properly and further the learned court below has considered the title and possession of the parties which are not required to be looked into in probate case. In probate case the only point for consideration is as to whether the Will in question is genuine or not and, as such, the impugned order, on that ground itself, is fit to be set aside. Learned counsel for the appellant has stated that under Section 263 of the Indian Succession Act, revocation or annulment for general cause can be done and there is no any ground available in the present case to which learned counsel for respondent submits that under Section 263 of the Indian Succession Act there are illustrations and illustrations (ii) speaks that: “The grant was made without citing parties who ought to have been cited”.

Learned counsel for the appellant submits that under Section 283 sub clause 1 and 2 of the Indian Succession Act procedures have been prescribed and as per that procedure, the citation was issued and there was no illegality in granting the probate.

Having considered the submissions urged at bar, after going through the impugned order and lower court record, it is manifest that O. W. 5 Kharpatu Ram in his evidence, paragraph 6,

has specifically stated that when he started beating the drum there were only 3-4 persons and all were children and besides that there was none and further no one has come from outside. Thus, it is manifest that general citation issued was not as per the requirements of the law rather it was made bala-bala and on that ground probate granted to the appellant Ravi Shankar Singh was rightly revoked. In the result, finding no merit in this miscellaneous appeal, the same stands dismissed.

However, it is made clear that other findings given in the impugned order will not be taken into consideration at the time of considering the Probate Case No. 56 of 1998 and the learned court will be at liberty to give finding on its own on the basis of materials available on the record.

(Jitendra Mohan Sharma, J)

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