

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2626 of 2014

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Rajendra Sharma

..... Petitioner/s

Versus

Sita Muni Devi & Ors

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rahul Nath

For the Respondent/s : Mr. Rahul Nath

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

5 09-02-2016

Heard learned senior counsel Mr. Bakhsi S.R.P. Sinha

for the petitioner and the learned counsel Mr. Basant Kumar
Tripathi, for the respondents.

It appears that an application for grant of Letter of Administration has been filed by the respondent No.1 before the Court below. In the said Letter of Administration application which was registered as Probate Case No. 21 of 2008, the petitioner appeared and filed caveat and objection was raised regarding the maintainability of the probate case on the ground that it is premature because in the will, it is mentioned that on the death of the testator, the property will go to wife of the testator namely, Radhika Kuer and on her death only the property shall go to the present respondent no.1, who has filed the probate case. Therefore, the application filed by the respondent no.1 for the grant of Letter of Administration is premature. The respondent no.1 herein filed reply to the said application. The Court below by the impugned order has held that this matter shall be decided at the

time of hearing of the probate case.

Learned senior counsel submitted that the respondent no.1 has no right to file probate case during the life time of her mother-in-law Radhika kuer but without making Radhika Kuer as a party in the probate case has filed the probate case which is not maintainable. But the learned Court below has erroneously held that this ground shall be considered at the final stage of hearing. According to the learned counsel, since the probate case itself is premature and not maintainable, there is no question of jurisdiction of the Court arises to decide the probate case.

On the other hand, the learned counsel appearing on behalf of respondent no.1 admitted the fact that in the registered Will, there is specific mention that on the death of the testator the property will go to his widow and on the death of the widow, it will go to the respondent no.1 Sita Muni Devi, but according to the learned counsel, the mother-in-law i.e., Radhika Kuer has given in writing the authority to the respondent no.1 to file the probate case and get the Letter of Administration.

Perused the probate application, which has been annexed as annexure-2 to this writ application, it appears that according to the requirement under Section 278 of the Indian Succession Act, the widow itself has not been made party in this probate case.

It is admitted by the learned counsel for the

respondent that the mother-in-law Radhika Kuer is still alive as submitted by the learned counsel mentioned in detail above. If at all the right has been given by the mother-in-law of the respondent no.1 or not i.e., the matter that can be decided in presence of the widow of the testator only. Further it is a registered deed of Will and the right to get the Letter of Administration/ probate by the respondent no.1 is dependant on the death of the widow. Therefore, the question which is being raised by the petitioner in this writ application is a matter that should be decided first. Unless it is held that the probate case is maintainable the Court will not get any jurisdiction to decide the probate case itself on merit.

Accordingly, this writ application is allowed and the matter is remanded back to the Court below. The Court below is directed to decide on merit the application filed by the petitioner after hearing the parties according to law. Any observation made by this Court in this order regarding merit or otherwise shall not either influence the Court or the parties shall not be prejudiced by the same. The Court below shall decide of its own according to law.

Thus, this writ application is allowed with the aforesaid direction.

(Mungeshwar Sahoo, J)

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