

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.491 of 2014

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Pinkesh Kumar, Son of Sahdev Sharma, resident of Ismialpur, P.O. and P.S.
Doriganj, District-Saran.

.... Appellant/s

Versus

1. State of Bihar, through the Chief Secretary, Govt. of Bihar, Old Secretariat,
Patna.
2. D. M. Saran, Chapra.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Manjul Kumar, Advocate.
Mr. Sarvendra Kumar Verma, Advocate.
Mr. Jai Vardhan Narayan, Advocate.
Mrs. Pooja Srivastava, Advocate.

For the State : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 07-12-2017

Heard learned counsel for the appellant. No one turned up on behalf of the respondents to advance argument in the appeal.

2. This appeal has been preferred against the order dated 03.06.2014 passed by the District Judge, Saran at Chapra in Probate Case No. 08 of 2010 whereby the learned Court dismissed the aforesaid probate case of the appellant.

3. The factual matrix of the case is that the appellant



who happens to be legatee of the Will dated 20.06.2008 executed by Birendra Maharaj has filed Probate Case No. 08 of 2010 for granting the probate of the said Will with the case in succinct that the appellant happens to be the cousin brother of Birendra Maharaj. He used to render services to him and being pleased with his services, he bequeathed his entire property in his favour vide unregistered Will dated 20.06.2008 and said Birendra Maharaj died on 28.01.2009.

4. None appeared in the court below to contest the aforesaid case. The appellant adduced ocular as well as documentary evidence in buttress of his case.

5. After hearing the appellant and perusing the record, learned lower court dismissed the aforesaid probate case of the appellant vide order dated 03.06.2014.

6. Being aggrieved and dissatisfied with the aforesaid dismissal order, the appellant has filed the present miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that the learned lower court has wrongly dismissed the aforesaid probate case of the appellant on the ground that he has not mentioned in the plaint the factum of executing the Will in presence of witnesses, namely, Ratan Maharaj and Deep Narain Maharaj making it skeptical and also on the ground that the appellant has not



explained the circumstances in which Birendra Maharaj has died. Though he has filed the photostat copies of post mortem report of the said Birendra Maharaj and his death certificate as well which are on record, but learned lower court has failed to consider the aforesaid documents filed by the appellant in the right perspective. The aforesaid Will has also been validly proved by its two attesting witnesses.

8. From perusal of the record, it appears that the Will dated 20.06.2008 allegedly executed by Birendra Maharaj in favour of the appellant has been legally and validly proved by the attesting witnesses examined in the case as PWs-2 and 3. Mere not mentioning the factum of execution of the said Will in presence of the aforesaid witnesses by the appellant in the plaint, in my considered opinion, does not make the Will suspicious. The appellant has also filed aforesaid Will, death certificate and photostat copy of post mortem report of Birendra Maharaj in buttress of his case. But, the aforesaid death certificate and post mortem report of Birendra Maharaj do not appear to have been legally brought on record by the appellant as the same have not been got exhibited due to laches on the part of the appellant and for the said laches, in my considered opinion, the case should not be dismissed on merit.

9. In the interest of justice and for final adjudication of



the matter on merit, I think it proper to get the aforesaid probate case disposed of by the learned lower court on merit after giving opportunity of exhibiting aforesaid documents to the appellants. Accordingly, aforesaid order passed by the learned lower court is set aside and the case is remitted back to the learned lower court to decide it afresh after giving opportunity of exhibiting the aforesaid documents filed by the appellant to him. This appeal is, accordingly, disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.12.2017
Transmission Date	

