

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 184 of 2014

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1. Ram Chandra Prasad Rastogi S/o late Bhawan Das Rastogi, R/o village Parihara, P.O. Parihara, P.S. Manjhaul, Dist. Begusarai at present residing at village Parihara, P.O. Parihara, P.S. Bakhari, Dist. Begusarai.
 2. Durga Devi, W/o Arjun Lal Rastogi, D/o late Bhawan Das Rastogi, residing at village Parihara, P.O. Parihara, P.S. Bakhari, Dist. Begusarai.
 3. Sarswati Devi, W/o Sant Kumar Rastogi, D/o late Bhawan Das Rastogi, R/o P.O. Shakti Nagar, Chilka Tand Dist. Sone Bhadra, Uttar Pradesh.
 4. Parvati Devi, W/o Pashupati Prasad Rastogi, D/o late Bhawan Das Rastogi, R/o P.O. Kudra, P.S. Kudra, Dist. Kaimur.

.... Petitioners

Versus

1. Prem Devi, W/o late Jagdish Lal
2. Sanjay Kumar,
3. Santosh Kumar,
4. Sanjeev Kumar, No. 2 to 4 all sons of late Jagdish Lal
5. Sunita Devi, D/o late Jagdish Lal, W/o Sri. Anil Prasad
All resident of village Parihara, P.S. Bakhri, P.O. Parihara, Dist. Begusarai.....Substituted heirs of late Jagdish Lal.....Applicant

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Roy Shivajee Nath, Sr. Adv.
Mr. Saurabh Nath, Adv.
For the Opposite Parties: Mr. Pramod Kr. Sinha, Adv.
Mr. Arvind Kr. Sharma, Adv.
Mr. Chetan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT

Date:10-11-2017

This revision petition filed under Section 115 of the C.P.C. is directed against the order dated 22.09.2014 passed by learned in-charge District & Sessions Judge-I, Begusarai in Misc. Case No. 01 of 2005 by which and whereunder he allowed the substitution petition dated 29.03.2014 filed by the opposite parties for



substituting the sole plaintiff, namely, Jagdish Lal in Title Suit No. 03 of 1989.

2. The brief fact, which lies to file revision petition is that, one Rajendra Lal and Jagdish Lal filed Probate Case No. 07 of 1986 under Section 278 of Indian Succession Act, 1925 for grant of probate of alleged Will said to be executed by Banarsi Lal on 25.11.1985 in their favour. The aforesaid probate case was contested by the sole daughter of Banarsi Lal, namely, Smt. Gaya Devi and on her contest, the aforesaid Probate Case No. 07 of 1986 was converted into title suit bearing Title Suit No. 03 of 1989. During pendency of above stated Title Suit No. 03 of 1989, the sole defendant namely, Smt. Gaya Devi died leaving behind petitioners, who were substituted in place of defendant Gaya Devi. However, the aforesaid Title Suit No. 03 of 1989 was dismissed for default on 10.11.2000 but one of the applicants, namely, Jagdish Lal filed Misc. Case No. 01 of 2002 which, too, dismissed for default on 28.04.2003 and for restoration of Misc. Case No. 01 of 2002, the above stated Jagdish Lal again filed Misc. Case No. 02 of 2003 but that Misc. Case No. 02 of 2003 was also dismissed for default on 02.04.2005. Again, the aforesaid Jagdish Lal filed Misc. Case No. 01 of 2005 for restoration of above stated miscellaneous cases but during pendency of Misc. Case No. 01 of 2005, the sole applicant of aforesaid Misc. Case No. 01 of 2005,



namely, Jagdish Lal @ Jagdish Prasad Rastogi died on 20.01.2014 and thereafter, on 29.03.2014, the legal representatives/legal heirs of deceased Jagdish Lal filed a petition under Order 22 Rule 3 read with Order 1 Rules 10 & 151 of the C.P.C. for their substitution in place of deceased Jagdish Lal. The learned court below allowed the aforesaid petition dated 29.03.2014 passing impugned order dated 22.09.2014 against which this revision petition has been preferred.

3. Learned counsel appearing for the petitioners challenged the impugned order arguing that according to Section 222 of Indian Succession Act, 1925, a probate can be granted only in favour of the executor appointed by the Will and, therefore, the legal representatives/legal heirs of deceased Jagdish Lal had no right to get themselves substituted in place of late Jagdish Lal who was an executor. Learned counsel for the petitioners heavily relied upon decision of this court reported in **AIR 1917 Patna 209** as well as several other decisions. He further submitted that according to law laid down by Division Bench of this Court in the above stated decision, the probate case cannot be converted into Letters of Administration. Learned counsel for the petitioners also relied upon recent decision of this court passed on 27.03.2014 in Test Suit No. 01 of 2010 wherein it has been held by a single Bench of this court having relied upon the above stated decision reported in **AIR 1917**



Patna 209 that the probate case cannot be converted into a case for Letters of Administration and also held that on the death of executor, the probate proceeding itself dies its natural death. The judgment of learned Single Judge passed in Test Suit No. 01 of 2010 is confirmed by a Division Bench of this Court in L.P.A. No. 1370 of 2014 vide judgment dated 10.07.2017.

4. On the other hand, learned counsel appearing for the opposite parties submitted that original applicants, namely, Rajendra Lal and Jagdish Lal were not only executors of the Will rather they were legatees also and it is well settled principle of law that the legatees can be substituted in place of original applicants. He further submitted that probate case can be converted into Letter of Administration and for that even no petition is required. In support of his contention, he referred decisions reported in **A.I.R. 1963 Mysore 136, A.I.R. 1963 Gujarat 32, (2000) 9 SCC 714 and 2002(1) PLJR 740**. He further submitted that moreover, substitution petition was filed in Misc. Case No. 01 of 2005 and not in the probate case and, therefore, the learned court below rightly passed the impugned order.

5. Having heard the contentions of both the parties, I went through the record as well as decisions cited on behalf of the parties. It is an admitted position that probate can be granted in favour of the executor only and Section 222 of Indian Succession Act, 1925



clearly bars grant of probate in favour of a person other than executor. It is also an admitted legal position that legal heir/legal representative of a legatee can be substituted, if the legatee dies during pendency of the proceeding but no probate can be granted in favour of legatee rather the Letter of Administration can only be granted in favour of legatee or his legal representative.

6. In the present case, admittedly, the deceased Banarsi Lal had one daughter, namely, Smt. Gaya Devi, who made objection in grant of probate in favour of original applicants and on her contest, Probate Case No. 07 of 1986 was converted into Title Suit No. 03 of 1989. It is also an admitted position that during pendency of aforesaid Title Suit No. 03 of 1989, one of the applicants, namely, Rajendra Lal died and only Jagdish Lal was left to be applicant/plaintiff of aforesaid Title Suit No. 03 of 1989. Moreover, it is also an admitted position that aforesaid Title Suit No. 03 of 1989 was dismissed in default and for restoration of aforesaid Title Suit No. 03 of 1989, Misc. Case No. 01 of 2002 and Misc. Case No. 02 of 2003 were filed but both the aforesaid miscellaneous cases were dismissed in default and, thereafter, Misc. Case No. 01 of 2005 was filed by the sole applicant, namely, Jagdish Lal @ Jagdish Prasad Rastogi who during pendency of aforesaid Misc. Case No. 01 of 2005 died on 20.01.2014 and, thereafter, petition under Order 22 Rule 3 read with Order 1 Rule



10 & 151 of the C.P.C. was filed on behalf of the opposite parties. Therefore, it is obvious from the aforesaid fact that at the time of death of sole applicant, namely, Jagdish Lal, no case either for grant of probate or for grant of Letters of Administration was pending before the court and the original applicant, namely, Jagdish Lal wanted to get the Title Suit No. 03 of 1989 restored to its original number. It would appear from the averments of alleged Will that the testator executed the Will in favour of Rajendra Lal and Jagdish Lal and no person was appointed as executor of the aforesaid Will by the testator though the aforesaid Rajendra Lal and Jagdish Lal filed Probate Case No. 07 of 1986 claiming themselves to be executor of the aforesaid Will. The contents of the aforesaid Will go to show that they were legatees of the aforesaid Will. It is also an admitted position that both the legatees, namely, Rajendra Lal and Jagdish Lal have already died and the opposite parties are claiming themselves to be legal heirs of both the above stated legatees. Therefore, it appears that opposite parties have right to seek issuance of Letter of Administration in their favour on the basis of Will in question but they have no right to get the Title Suit No. 03 of 1989 restored because the aforesaid Title Suit No. 03 of 1989 was filed by the Rajendra Lal and Jagdish Lal for grant of probate and it is well settled principle of law that probate can be granted only in favour of



executors of the Will. No doubt, the Apex Court of this country has held in the decisions as cited on behalf of the parties that a probate case can be converted into Letters of Administration but in the present dispute admittedly, no probate case is pending as the probate case had already dismissed for default. As I have already stated that opposite parties have no right to get the aforesaid probate case restored on its original number because no probate can be granted in their favour and at best, they can claim for Letters of Administration. Therefore, in my view, when the opposite parties have no right to continue the Probate Case No. 07 of 1986, the learned court below committed an error in substituting the opposite parties in place of sole applicant of Misc. Case No. 01 of 2005.

7. Therefore, on the basis of aforesaid discussions, this civil revision petition is allowed and accordingly, the impugned order dated 22.09.2014 passed by learned in-charge District & Sessions Judge, I, Begusarai in Misc. Case No. 01 of 2005 is, hereby, set aside.

8. In the aforesaid manner, this revision petition stands disposed of.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	21.07.2017
Uploading Date	13.11.2017
Transmission Date	N.A.

