

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.778 of 2017

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Ramashankar Prasad, Son of Late Suryadev Prasad Sinha, Resident of Village-Bankati South, P.O. Mahua, P.S. Baikunthpur, District-Gopalganj.

.... Petitioner

Versus

1. Smt. Sunita Devi, Wife of Shri Awadhesh Kumar Singh.

2. Anil Kumar Sinha, Son of Suryadev Prasad Sinha.

Both Resident of Village-Bankati South, P.O. Mahua, P.S. Baikunthpur, District Gopalganj.

.... Petitioners/Respondents (1st Set)

3. The Estate of Late Mosmat Parmeshwari Devi, Wife of Late Suryadev Prasad Sinha, Resident of Village-Bankati South P.O. Mahua, P.S. Baikunthpur, District Gopalganj.

.... Petitioners/Respondents (2nd Set)

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Appearance :

For the Petitioner : Mr. Naresh Prasad, Adv.

For the Respondent/s : Mr. Vijay Bardhan Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 13-09-2017

By the impugned order, dated 23.03.2017, passed in Probate Case No. 43 of 2015, the court of learned 8th Addl. District Judge, Gopalganj, has recalled an order, dated 19.07.2016, which was passed by the court in the said case. The said order, dated 23.03.2017 is under challenge in the present application filed under Article 227 of the Constitution of India.



2. It appears from the pleadings and other materials on record that two probate cases have been filed giving rise to (i) Probate Case No. 43 of 2015 and (ii) Probate Case No. 84 of 2016, the former by the respondents, whereas, the latter by the petitioner, in respect of the Wills, said to have been executed by one Parmeshwari Devi. The petitioner was not made party in Probate Case No. 43 of 2015. He claims to be the son of the executant of the said Will. He filed an application for intervention in the said probate case and amalgamation of the two probate cases. The said two probate cases were ordered to be heard analogous by an order, dated 19.07.2016, passed by the court below. Subsequently, respondent No. 1 filed an application, on 14.02.2017, for recall of the said order, dated 19.07.2016, on two grounds. Firstly, the descriptions of the property mentioned in the Will, which the parties claimed to be probated, were different. Secondly, the second probate case was filed at much latter stage in the year 2016, without paying the stamp duty.

3. Learned court below has allowed the application for recall of the order, dated 19.07.2016, and has decided to proceed separately in two probate cases by an order, dated 23.03.2017, which is under challenge in the present proceeding.

4. Learned counsel, appearing on behalf of the petitioner, has submitted that the court below has erroneously



recalled the earlier order, dated 19.07.2016, on realizing the fact that the parties to both the probate cases are same.

5. On perusal of the impugned order, I do not find any illegality, which can be said to be causing miscarriage of justice. The Court has noticed the fact that the properties, mentioned in the two Wills, are different. The Court has also noticed that even the stamp duty, in respect of Probate Case No. 84 of 2016, has not been filed in respect of 3 Kathas and ½ dhoors of the land. On perusal of the pleadings on record, I find that the description of the lands, given in the two Wills, to be manifestly different. Learned counsel for the petitioner has though submitted that at least a piece of land is common in both the cases.

6. The court below has limited scope in a probate case, which is to decide the genuineness of the Will. Once the Will is found to be genuine, the last Will shall certainly prevail over the previous Will, if any. The impugned order, therefore, needs no interference.

7. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.09.2017
Transmission Date	N/A

