

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1505 of 2017

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1. Radha Devi W/o Anil Kumar

2. Rahul Kumar S/o Anil Kumar Both R/o Vill. - Panchu Main Road, P.S. - Hasua,
Distt. - Nawada.

.... Petitioner/s

Versus

1. Bibi Shakila Khatoon W/o Md. Aslam R/o Vill, Panchu Khankhanapur, P.S. &
Anchal - Hasua, Sub-Division & Distt. - Nawada.

2. Fatima W/o Md. Shakil R/o Vill - Bardaha, P.S. - Sirdalla, P.O. - Sirdalla, Distt. -
Nawada.

3. Most. Jaibun Nisha W/o Late Md. Moin Mian R/o Vill, Panchu Khankhanapur,
P.S. & Anchal - Hasua, Sub-Division & Distt. - Nawada.

4. Anwari Khatoon W/o Md. Khusheed R/o Vill - Tungi, P.S. - Tungi, Anchal -
Hasua, Distt. - Nawada.

5. Kaushar Khatoon W/o Anjhar Ali R/o Mohalla - Gaya Abgila, Mofassil & P.O. -
Abgila, Distt. - Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-04-2018

1. Heard both sides.

2. The petitioner filed this civil miscellaneous petition against the order dated 14.07.2017 passed by 1st Additional District Judge, Nawada in Probate Case No.28 of 2014 by which the petition of the petitioners to allow him to intervene and contest the case filed under Order I Rule 10 read with Section 151 C.P.C. has been dismissed.

3. One Md. Moin executed a registered deed of Will in favour of his daughter-in-law, Bibi Shakila Khatoon on 13.06.2007.



Md. Moin died on 27.05.2014 leaving behind a son namely Md. Aslam, his widow, Most. Jaibun Nisha and three daughters namely Fatima, Anwari Khatoon and Kaushar Khatoon. Bibi Shakila Khatoon, the legatee of the Will filed Probate Case No.28 of 2014 on 22.08.2014 in the Court of District Judge, Nawada for probate of the Will. Anwari Khatoon and Jaibun Nisha did not file any objection but during the pendency of the probate case, Kaushar Khatoon, one of the daughters of Md. Moin executed two sale deeds on 17.02.2016/01.8.2016 in favour of Radha Devi, petitioner No.1 in respect of the land of Khata No.30, R.S. Plot No.2473, area 3 decimals and another sale deed on 22.02.2016 in favour of Rahul Kumar, petitioner No.2 with respect to R.S.Khata No.30, R.S. Plot No.2473, area 9 decimals. Kaushar Khatoon, one of the daughters of Md. Moin filed written statement in the probate case stating therein that Md. Moin did not execute any Will and the Will is forged and fabricated. She also admitted execution of two sale deeds in favour of the petitioners. Thereafter, the petitioners also filed petition to implead them in the probate case as they got interest in the share of the property of the testator by virtue of the sale deed executed by Kaushar Khatoon, one of the legal heirs of Md. Moin. Later on, Kaushar Khatoon in his rejoinder to the petition of the petitioners denied to have executed any sale deeds after receipt of consideration



money in favour of the petitioners. Learned District Judge dismissed the petition of the petitioners holding that it is not a general suit and petitioners are stranger to the family of the applicant, therefore, they are not either co-sharer or residuary or in kindred relations with the applicant vide order dated 14.07.2017. Petitioners being aggrieved by the aforesaid order, filed this civil miscellaneous petition.

4. Mr. S.S.Dvivedi, learned senior counsel for the petitioners submits that in view of the provisions of Section 284 of the Indian Succession Act, the petitioners being the purchasers from the legal heirs of the testator is entitled to file caveat and they are required to be heard before grant of probate or issuance of letters of administration. Learned senior counsel for the petitioners placed reliance on the judgment of the Supreme Court reported in **(2008) 4 Supreme Court Cases 300(Krishna Kumar Birla v. Rajendra Singh Lodha and others)** and submitted that caveatable interest is determined on the basis of real interest in the estate left by testator. Caveat interest is an interest in the deceased testator's estate which may be affected by grant of probate and would depend upon the fact situation in each case. A person who would have succeeded to the testator's estate in case of intestate succession would ordinarily have a caveatable interest. Therefore, the petitioners to what interest in the property of the testator by virtue of sale deed executed by the legal



heirs, a daughter is entitled to inherit the property of the testator, is entitled to be heard by the court in seisin of the case to grant probate or letters of administration.

5. On the contrary, contending the argument of the learned counsel for the petitioners, Mr. Anil Kumar Jha, learned senior counsel for the respondent No.1-applicant submitted that in a probate proceeding, the jurisdiction of the court is being limited with regard to the genuineness of the execution of the Will and appointment of the executor. In a probate proceeding, for grant of probate, question of title or of the existence of the property mentioned in the Will cannot be decided. It is further submitted that the petitioners are the purchasers from one of the daughters of the testator, therefore, the question whether the daughter of the testator got any title, possession over the land of the testator cannot be decided in a probate case and for that even the daughter of the testator or vendee from her instead of raising objection in the probate case should file suit for declaration of title and possession and the same cannot be decided in the probate proceeding. Therefore, the order of the Additional District Judge rejecting the prayer of the petitioners to implead them as objector in the probate case does not require any interference.

6. On the basis of submission of both sides, the simple question arises for consideration is “whether the petitioners being the



purchasers of a piece of land from one of the daughters of the testator are entitled to be heard before the grant of probate or issuance of letters of administration in a probate case?

7. Section 283 of the Indian Succession Act, 1925(hereinafter referred to as the Act) enumerates the power of the District Judge relating to grant of probate. Section 283(1) of the Act confers power of the District Judge to issue citation calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceeding before the grant of probate or letters of administration. Section 284 of the 1925 Act provides for the lodging of caveat against grant of probate or letters of administration by the persons against which citation was given. The caveatable interest has been enumerated in Section 284 of the Act and according to Hindu Succession Act, there is no possibility other than persons to derive more interest.

8. It has also been held in the case of K.K.Birla(supra) in para 57 of the judgmnt as follows:

“57.The 1925 Act has nothing to do with the law of inheritance or succession which is otherwise governed by statutory laws or the custom as the case may be. It makes detailed provisions as to how and in what manner an application for grant of probate is to be filed, considered and granted or refused. Rights and obligations of the parties as also the executors and administrators appointed by the court are laid down therein. Removal of the existing executors and administrators and



appointment of subsequent executors are within the exclusive domain of the court. The jurisdiction of the probate court is limited being confined only to consider the genuineness of the Will. A question of title arising under the Act cannot be gone into in a probate proceeding. Construction of a Will relating to the right, title and interest of any other person is beyond domain of the probate court.”

9. In the case of **Ghulam Qadir v. Special Tribunal and others, (2002) 1 Supreme Court Cases 33** in para 62 of the aforesaid judgment, it has been held that there cannot be any dispute to the legal proposition that the grant of probate establishes conclusively as to the appointment of the executor and the valid execution of the Will. However, it does not establish more than the factum of the Will as probate court does not decide question of title or of the existence of the property mentioned therein. If despite admitting the execution of the Will and issuance of the probate, a question arises as to its effect on the property of another person which is likely to be affected, the affected persons may file suit.

10. It is apparent from the facts of the case that the petitioners being the purchasers of the land from one of the daughters of the testator claimed title over a piece of land included in the deed of registered Will executed by Md. Moin in favour of his daughter-in-law. Therefore, the petitioners in fact sought declaration of title by virtue of the sale deed executed by one of the daughters of the testator who claims to have share in the land with regard to which her father



executed a registered Will.

11. In my view, the title of the petitioners cannot be decided in a probate case where the jurisdiction of the probate court is limited to the extent to decide the genuineness of the Will sought to be probated or for grant of letters of administration. Therefore, I find that the petitioners are not necessary party and have got no right to be heard as caveator in a probate case and thus, I do not find any jurisdictional error or illegality in the order dated 14.07.2017.

12. In the result, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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