

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1035 of 2010

1. Sunita Devi, wife of Late Ram Autar Rai.

2. Birendra Rai, son of Late Chandrakant Rai.

Both residents of village Daniyalpur, P.S. Teghra, District Begusarai.

... .. Petitioners/ Appellants.

Versus

Ravindra Pd. Singh, son of Arjun Singh, resident of village Daniyalpur, P.S.

Teghra, District Begusarai.

... .. Opposite Party/ Respondent.

Appearance :

For the Appellants : Mr. Kumar Udy Singh, Advocate.

Mr. Jai Prakash Singh, Advocate.

Mr. Anil Kumar, Advocate.

For the Respondent : Mr. Vivekanand Prasad Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 04-12-2018

Heard learned counsel for the appellants and learned counsel for the respondent on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the order dated 06.06.2009 passed by the Sub Judge-I, Begusarai in Misc. Case No.14 of 2004, whereby the learned lower court dismissed the petition for revocation of probate filed by the petitioners.

3. Factual matrix of the case is that one Bhim Rai is said to have executed a Will dated 18.09.1977 in favour of his



nephew, Ravindra Prasad Singh. Later on the said Bhim Rai passed away on 20.04.1984. After his demise, said Ravindra Prasad Singh filed a probate petition vide Probate Case No. 69 of 1996 on 24.09.1996, which was allowed and probate was granted in his favour. Petitioners, had filed a petition for revocation of the aforesaid grant of probate vide Misc. Case No.14 of 2004. The respondent, who happens to be executant of the aforesaid Will and in whose favour the probate was granted, was debarred from filing the written statement for non-compliance of order of depositing the cost saddled upon him while recalling the ex parte order passed against him.

4. After hearing the petitioners of the said case, the learned lower court dismissed the aforesaid revocation petition vide order dated 06.06.2009.

5. Being aggrieved and dissatisfied by the aforesaid order the petitioners of the aforesaid case preferred the present miscellaneous appeal.

6. It is submitted by learned counsel for the appellants that under Section 264 of the Indian Succession Act, it is the District Judge who has got jurisdiction to revoke the probate and not the Sub Judge. As per provision of Section 265 of the Indian Succession Act (hereinafter in short referred to as



the 'Act') and vide Notification No.192 A dated 22.05.1981 of this court, the District Judge transferred the Probate Case No.69 of 1996 to the Sub Judge-I which was decided by the aforesaid court and probate was granted. Accordingly, they filed the revocation petition in the said court. But under Section 265 of the Act only the probate case can be transferred by the District Judge to the Sub Judge and Sub Judge can decide uncontested probate case only as the delegate of the District Judge. Hence learned Lower Court should have referred the revocation matter to the District Judge as he has inherent lack of jurisdiction but did not do so rather decided itself. Hence, the aforesaid order passed by the learned lower court is wrong, illegal and without jurisdiction and is liable to be set aside. Learned counsel for the appellants relied upon the verdict of Calcutta High Court rendered in **Uday Chand Mahatab Bahadur of Burdwan Vs. Phanindra Lal Ghosh** reported in **AIR (31) 1944 Calcutta 384** in buttress of his case.

7. On the other hand, learned counsel for the respondent submitted that as the matter of probate was transferred to the court of Sub Judge-I by the District Judge and it is the Sub Judge-I who decided the same and allowed the aforesaid probate case hence only the Sub Judge-I has got



jurisdiction to revoke the probate granted by it and not any other court. It is further submitted that the appellants have not raised the aforesaid plea at the time of filing of the revocation petition rather suo motu filed the revocation petition before the court of Sub Judge-I instead of filing the same in the court of District Judge. Hence, he is barred from raising the aforesaid plea at the appellate stage. It is further submitted that the Sub Judge has got the jurisdiction to decide the revocation matter as the delegate of the District Judge and as a Principal Civil court of original jurisdiction as defined under Section 2 (bb) of the Act. Hence, the aforesaid order passed by the learned lower court is just, legal and valid and well within the jurisdiction. Hence it is liable to be upheld and this miscellaneous appeal is shorn of merit and is liable to be dismissed. He has relied upon the verdicts rendered in **Mt. Daho Kuer Vs. Mt. Tural Del** reported in **AIR 1924 Patna 593**, **(Sheikh) Kalloo Vs. Mt. Noor Jahan** reported in **AIR 1935 Oudh 38** and **Hans Raj Mittal Vs. Khushi Ram and others** reported in **AIR 1964 P & H 485** in buttress of his case.

8. From perusal of the record, it appears that earlier Probate Case No.69 of 1996 was filed before the court of District Judge, Begusarai by the respondent, which was later on



transferred to the court of ADJ-VI. Subsequently, as per the Notification No.192 A dated 22.05.1981 of this court, the aforesaid case was transferred by the District Judge to the court of Sub Judge-I, Begusarai and after hearing the respondent the learned Sub Judge-I granted the probate. For revocation of the aforesaid probate, the appellants filed revocation petition vide Misc. Case No.14 of 2004 in the said court of Sub Judge-I, which was dismissed by the impugned order.

9. From perusal of Section 264 of the Act, it appears that the District Judge shall have jurisdiction in granting and revoking the probate and letters of administration in all cases within his district barring the cases as adumbrated under Section 2 of the said section. Under Section 265 of the Act ibid the High Court may appoint such Judicial Officers within any district as it thinks fit to act for the District Judge as a delegate to grant probate and letters of administration in non-contentious cases within such local limits as it may prescribe. In view of the aforesaid provision and Notification No.192 A dated 22.05.1981 of this court, the District Judge transferred the aforesaid uncontested probate case to Sub Judge-I, Begusarai which was decided by the said court. Under Section 265 of the Act ibid no power has been conferred to the District Judge to transfer the



matter of revocation of probate in contentious or non-contentious matter as in the said section District Judge has been given power to appoint such Judicial Officers within its district as he thinks fit as a delegate to grant only probate and letters of administration in non-contested cases and under Section 264 of the Act, it is the District Judge who has got jurisdiction for revoking the probate or letters of administration.

10. Though the appellants filed the petition for revocation of the probate in the court of Sub Judge-I but, in my considered opinion, by filing the petition before the court of Sub Judge-I or by agreement the court which has inherent lack of jurisdiction to decide the aforesaid matter is not empowered to entertain the said matter. Sub Judge-I on receiving the aforesaid petition of the appellants, instead of deciding the same itself ought to have referred the matter to the District Judge, Begusarai for its hearing as under Section 264 of the Act it is only District Judge who is authorized to dispose of the matters of revocation of probate and letters of administration. In **Uday Chand Mahatab Bahadur's (supra)** the Calcutta High Court has ruled that the district delegate cannot decide an application for revocation of probate. An application for revocation of probate being contentious matter the district delegate cannot



decide it. He should return such application for being presented before the court of District Judge. The case law in **Mt. Daho Kuer (supra)** as relied upon by the respondent is not applicable in the case under hand as in the aforesaid case the District Judge by his order dated 5th of February, 1924 had transferred the case to the Additional District Judge for disposal under Section 8 (2) of the Bengal N.W.P. and Assam Civil Courts Act and this Court has held that under said Act the functions of the District Judge under the Probate and Administration Act and Indian Succession Act relating to grant and revocation of probate have been assigned to Additional Judges. An Additional Judge so appointed discharge any of the functions of a District Judge which the District Judge may assign to them and in the discharge of those functions, they shall exercise the same powers as of the District Judge. While in the case under hand only the power of granting probate and letter of administration has been assigned by District Judge to Sub Judge. Moreover, the aforesaid case was decided prior to proclamation of the Indian Succession Act, 1925. Another case law (**Shikh) Kalloo (supra)** cited by learned counsel for the respondent is also not applicable in the case under hand as in the said case it was not the matter of revocation of probate rather grant of probate wherein it has been held by



Oudh High Court that an Officer who is both a Subordinate Judge and district delegate, although as a district delegate cannot dispose of a contentious proceeding, nevertheless he can do so as a Subordinate Judge if the proceeding is transferred to him by order of District Judge while in the case under hand it is a matter of revocation of probate and under Section 264 of the Act only the District Judge has got jurisdiction to decide the said matter. So far as another judgment relied upon by the learned counsel for the respondent in **Hans Raj Mittal (supra)** is concerned, though this case relates to revoking of probate granted in favour of the appellant by the court of Sub Judge, but it is also not applicable in the case under hand as in my considered opinion under Section 2(bb) of the Act, Principal Civil Court of original jurisdiction is not the Sub Judge rather the District Judge. District Judge includes the Additional District Judge. The District Judge either may himself hear the revocation matter or transfer it to any A.D.J. and not to the Sub Judge. This Court in the case of **Mt. Daho Kuer (supra)** has ruled that “District Judge” mean “the Judge of a principal civil court of original jurisdiction”.

11. In the facts and circumstances of the case, I find and hold that the aforesaid order passed by the learned



lower court is wrong, illegal and without jurisdiction and is set aside. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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