

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2960 of 2015

=====

Nagendra Prasad Singh Son of Sri Tarkeshwar Singh resident of village - Kripaganj (Makdumpur), P.S. Silaw, District - Nalanda at Present residing at Shiv Shakti Nagar Road No. 1, behind Bahadurpur Bazar Samiti, P.S. Kadamkuan, District - Patna

.... Petitioner/s

Versus

Rakesh Kumar @ Jai Mandal Singh Son of Sri Tarkeshwar Singh resident of village - Kripaganj (Makdumpur), P.S. Silaw, District - Nalanda

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Uday Shankar Sharan Singh, Advocate

For the Respondent/s : Mr. Surendra Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-09-2018

Petitioner is objector in Title Suit No.03 of 2009 (Probate Case No.20 of 2008) pending in the Court of Additional District Judge-II, Nalanda at Biharsharif. He has filed this application for quashing the order dated 18.12.2014 whereby and whereunder his prayer to issue Dusti Summon against Dr. P.C.Verma for his evidence as witness on his behalf was rejected.

2. Heard learned counsel for the petitioner and the respondent.

3. The aforesaid Probate Case No.20 of 2008 was filed on the file of District Judge, Nalanda for grant of probate with respect to estate of deceased Kamla Prasad Singh, testator of the Will dated 08.07.2008. The petitioner appeared and filed objection. The said



Probate Case was converted into title suit. In course of evidence, the petitioner filed a petition to issue Dasti Summons against Dr. P.C.Verma for his evidence.

4. It has been submitted that the testator late Kamla Prasad Singh was aged about 70 years and at the time of alleged execution of Will, he had no physical or mental capacity to execute the Will. He was affected by paralysis in the right side of his body due to brain haemorrhage. His treatment was done by Dr. P.C.Verma of Sri Ram Hospital, Kankarbagh, Patna. The petitioner filed copy of prescription and other papers to show that the testator was treated by the said doctor. The medical certificate has been marked as exhibit. The learned court below refused to issue Dasti Summons for the evidence of said doctor observing that the document has already been marked as exhibit and so there was no need under Evidence Act to record his evidence.

5. The learned lawyer for the respondent while opposing the submission has admitted that the testator was treated by the said doctor. But as his prescription has already been marked as exhibit by the court below and so there is no need to issue summons for his evidence.

6. On perusal of impugned order, it appears that the prescription was proved by some formal witness. The witness who



proved the documents was not competent to narrate about the disease of the testator. The doctor who diagnosed the testator is the only competent person to speak about the disease and so in this view of the matter, the learned court below has committed error in observing that the evidence of said doctor is not essential.

7. In view of above discussions, the impugned order refusing to issue Dasti Summons for the evidence of Dr. P.C.Verma is set aside and this application is allowed. The court below is directed to give an opportunity to the petitioner to examine the said witness.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.09.2018
Transmission Date	N/A

