

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.934 of 2017

=====

Md. Serajuddin Ansari Son of Late Sayeed Hussain Ansari, Resident of
Village- Parasiya Nirpat, Post Office and Police Station- Nabinagar,
District- Aurangabad (Bihar).

.... Petitioner

Versus

Md. Tejamul Hussain Ansari Son of Late Sayeed Hussain Ansari, Resident
of Village- Parasiya Nirpat, Post Office and Police Station- Nabinagar,
District- Aurangabad (Bihar).

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Shakib Ayaz

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 14-08-2018 Heard both sides.

The petitioner has filed this Civil Miscellaneous
petition against the order dated 11.04.2017 passed by learned
Additional District Judge-IV, Aurangabad in Probate (Title Suit)
No.03/2005/06/2010 by which the petition of the petitioner to
allow him to examine the scribe of the deed of will has been
rejected.

Learned counsel for the petitioner submits that due to
lack of knowledge the petitioner could not examine the scribe of
the will dated 25.06.2004 executed by Syed Hussain in favour of
the petitioner and consequently the aforesaid document could not
be proved/marked/brought on record due to non-examination of



scribe and document was not proved at the time of examination of attesting witness and thus plaintiff filed the petition to allow him to examine the witnesses in order to prove the documents but by the impugned order, learned Additional District Judge-IV, Aurangabad rejected the petition on the ground that the evidence of the plaintiff was closed in the year 2013 and the defendants have also examined their witnesses. The suit is at the fag end of argument. It is further submitted that if the petitioner is not allowed to examine his witness in order to prove the registered will, it would cause irreparable loss and injustice to the petitioner.

On the other hand, learned counsel for the defendant vehemently opposed the prayer of the plaintiff/petitioner and submitted that the petitioner cannot be allowed to fill up the lacuna in his case. The evidence of the plaintiff was closed on his prayer and after three years, the petitioner filed petition for allowing him to examine his witnesses and bring on record the will in evidence. Therefore, at this stage, when the case is at the fag end of argument, the petition of the petitioner has rightly been dismissed and the order does not require any interference.

Considering the submission of both sides, I find that the registered deed of will is the subject matter of the suit. The petitioner filed the case for Probate of the registered will but on



protest, the suit was converted into Probate (Title suit) No. 3/2005. The plaintiff examined even the attesting witness of the will but it appears that due to lack of knowledge the petitioner could not bring on record the registered deed of will as evidence on record and if the plaintiff is not allowed to examine the witness and bring on record the registered deed of will it will certainly cause irreparable loss and injustice to the petitioner. Taking into consideration the aforesaid fact, I find that the learned Additional District Judge-IV, Aurangabad has committed jurisdictional error while not allowing the petitioner to examining the witness in order to prove the registered will.

Accordingly, the order dated 11.04.2017 is set aside with direction to the court below that the plaintiff be allowed to examine the attesting witness and scribe of the registered deed of will as evidence on payment of cost of Rs. 3000/-. The cost should be paid to the plaintiff within one month from today.

(Prabhat Kumar Jha, J)

Amit/-

U			
---	--	--	--

