

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8399 of 2014

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Smt. Saroj Singh daughter of Late Uma Shankar Narayan Singh and wife of Sri Krishna Chandra Prasad Singh resident of village Barahia, Tole - Ramsen, P.S. - Barahia, District - Lakhisarai presently residing at village + P.O. - Khairwa Darp P.S. + District - Sheohar.

.... Petitioner

Versus

Sri Prabha Shankar Narayan Singh son of Late Jagdish Narayan Singh resident of village + P.O. - Khairwa Darp P.S. + District - Sheohar.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Pushkar Narain Shahi, Sr. Advocate
Mr. Sanjeet Kumar Singh, Advocate
Mr. Shivam and Anuraj Singh, Advocates.

For the Respondent/s : Mr. Y.P.Sinha & Shankar Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-04-2018

The petitioner has filed this application for setting aside the order dated 02.04.2014 passed by District Judge, Sitamarhi in Probate Case No.05 of 2014 whereby and whereunder the learned District Judge, Sitamarhi held that the probate case is not maintainable in the court of District Judge, Sitamarhi as majority of the lands mentioned in probate petition are situated within the jurisdiction of Sheohar district. The probate case was dismissed with liberty to the petitioner to file the same under the jurisdiction of Sheohar district.

2. Heard both sides.

3. It appears that the petitioner had filed the aforesaid Probate Case No.05 of 2014 for grant of probate on the basis of will dated 31.01.1993 executed by her grand-father. The office reported that most of the property mentioned in the probate application situate



in the district of Sheohar and so the suit is not maintainable before the court of District Judge, Sitamarhi. The petitioner filed objection to the said report stating that some of the properties of probate application also lie within the district of Sitamarhi and so the probate case is maintainable before the District Judge, Sitamarhi. The District Judge, Sitamarhi as per impugned order dismissed the case as stated above.

4. Heard learned counsel for the petitioner and the respondent and perused the record.

5. It is not in dispute that the probate application was filed with respect to will whereunder some plots of Sitamarhi district and a large number of plot of Sheohar district were bequeathed in favour of the petitioner. From the copy of probate application, it appears that the petitioner has mentioned four plots of Sitamarhi district besides the land of Sheohar district. On the point of jurisdiction of probate court, I would like to refer the provision of Section 270 of Indian Succession Act which runs as follows:-

270. “**When probate or administration may be granted by District Judge.**—Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the judge.”

6. The jurisdiction with respect to filing of suit has been described in Section 17 of Civil Procedure Code which are as follows:-

17. “Suits for immovable property situate within



jurisdiction of different Courts.—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”

7. On conjoint reading of provisions of Section 270 of Indian Succession Act and Section 17 of the Civil Procedure Code, it is manifest that the suit can be instituted at any place where the any property situates within the jurisdiction of the Court. It is not in dispute that the probate case has been filed with respect to four plots of Sitamarhi district besides other land. The court below has committed error in dismissing the probate case on the ground that the court of Sitamarhi district has no jurisdiction and major portion of suit lands situates in Sheohar district.

8. For the reason stated above, the impugned order is set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
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