

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22920 of 2013

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1. Amresh Kumar Son of Fulena Singh,
 2. Kunal Kumar Singh Son of Sri Fulena Singh,
 3. Chandan Kumar Singh Son of Fulena Singh,
 4. Raushan Kumar Singh @ Raushan Son of Fulena Singh,
 5. Kanhaya Kumar Singh Son of Sri Fulena Singh,
 6. Most. Sita Devi Wife of Late Arjun Singh,
Respondent nos. 1 to 6 are resident of village - Simha, P.S. Motihari, District- Begusarai.
 7. Most. Janak Nandani Devi Wife of Ram Nandan Singh, resident of village - Bihat, P.S. Barauni, District- Begusarai.

.... Petitioner/s

Versus

1. Binay Kumar Agrawal Son of Gopal Prasad Agrawal, resident of Gangastores, Near Septan Hill, Bathuna, District- Mirzapur, Uttar Pradesh
2. Vikash Kumar Agrawal Son of Gopal Prasad Agrawal, resident of Gangastores, Near Septan Hill, Bathuna, District- Mirzapur, Uttar Pradesh
3. Kanhaiya Kumar Agrawal Son of Gopal Prasad Agrawal, resident of Gangastores, Near Septan Hill, Bathuna, District- Mirzapur, Uttar Pradesh
4. Mohan Kumar Agrawal Son of Gopal Prasad Agrawal, resident of Gangastores, Near Septan Hill, Bathuna, District- Mirzapur, Uttar Pradesh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.S. Arora, Sr. Adv.
Mr. Manoj Kumar, Adv.
Mr. Gaurav Pratap, Adv.
Miss Aishwarya, Adv.

For respondent nos.1 to 4 M/s Sanjeet Kumar, Raj Kamal, Digvijay and Narayan Sinha, Advs.

For intervenors-respondents. M/s Vishal Saurabh and Sujit Kr. Sinha, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 20-03-2018

Heard learned counsel for the petitioners, counsel for the
intervenor petitioner (I.A. No. 8463 of 2014) and learned counsel for the
respondents.



I.A. No. 8463 of 2014

2. The above interlocutory application has been filed by Vandana Kumari and three others for impleading them as respondent nos. 5 to 8 to this writ application.

3. It has been submitted that the intervenors-petitioners have purchased the disputed land, but they have not been made party to this application and so they are necessary to be heard in the present writ application.

4. The learned counsel for the petitioners on the other hand opposed the submission. It has been submitted that intervenors have neither disclosed the date of sale deed nor the name of persons from whom they have purchased the disputed land. The intervenors claim the land by virtue of registered sale deeds which were allegedly brought into existence during the pendency of probate application.

5. From the submission of both parties it appears that the present writ application has been filed for setting aside the order of court below whereunder the Miscellaneous Case No. 1/2012 filed by the petitioner was dismissed as not maintainable. The intervenors-petitioners were neither party to the probate case nor they have any concern with the revocation application. The intervenors purchased the land during the pendency of probate case and so the intervenors are not necessary party to this writ application.

6. The I.A. No. 8463 of 2014 is accordingly dismissed.



7. So far merit of this writ application is concerned, it appears that the respondent nos. 1, 2, 4 and 5 filed a probate case bearing No.14 of 2006 on the basis of Will dated 12.04.1994 executed by their grandfather namely Ganga Prasad Agrawal with respect to properties as mentioned in Schedule-A to C of the probate application. The said case was heard *ex parte* and the probate was granted in favour of the respondents. The case of the petitioners is that, the land originally belonged to one Shankra Devi, who died in the year 1993 leaving behind her husband Ganga Prasad Agrawal and a son Gopal Prasad Agrawal. After the death of Shankra Devi, her husband Ganga Prasad Agrawal and son Gopal Prasad Agrawal inherited the entire interest of deceased Shankra Devi. The petitioners purchased the land mentioned in Schedule-A of probate application from the said Gopal Prasad Agrawal by virtue of 9 sale deeds dated 06.09.1996 and 07.09.1996. After execution of sale deed, the petitioners came in possession over the said land. The said Gopal Prasad Agrawal further sold the land to different persons which are mentioned in Schedule-B of the probate application. The land mentioned in Schedule-C was sold by one Binay Prasad Agrawal (respondent no. 1) in favour of Sanjiv Kumar and Santosh Kumar vide registered sale deed dated 04.01.2001. The sons of Gopal Prasad Agrawal filed the above probate case in the year 2006 on the basis of deed of Will which was allegedly executed by their grandfather Ganga Prasad Agrawal.



8. The contention of the learned counsel for the petitioners is that the petitioners are purchasers and have purchased some portion of land in question from Gopal Prasad Agrawal, who had inherited half share in the property left by Shankra Devi and so the husband of Shankra Devi had no right to execute any Will with respect to the property which was inherited also by his son Gopal Prasad Agrawal. The said Ganga Prasad Agrawal had also put his signature on the sale deeds which were executed by his son Gopal Prasad Agrawal in favour of these petitioners. The applicants of Probate Case No. 14 of 2006 by suppressing the notices obtained the probate order in their favour fraudulently. The petitioners having come to know about the probate order, filed Miscellaneous Case No. 1/2012 before the Sub-Judge-I, Begusarai for revocation of probate of Will dated 12.04.1994 on the ground that the respondents obtained the order of probate by misstatement and suppressing the material fact as well as playing fraud. The said miscellaneous case was admitted for hearing. After notices, the respondents appeared and filed objection. The learned court below without entering into the merit of the case and giving any opportunity to the petitioners to adduce evidence in support of their case, heard the matter on the point of maintainability of case and dismissed the miscellaneous case as per impugned order. The order of court below rejecting the miscellaneous case on the ground of maintainability is unjustified and is not sustainable in the eye of law.



9. The learned counsel for the respondent on the other hand submitted that the probate case was filed impleading all the heirs of deceased and after due notice, the case was heard and probate was granted in favour of the respondents. He further submitted that the petitioners have no right to file revocation application in view of the fact that the probate court is only concern with the question as to whether the document forwarded as last Will of the deceased was duly executed and attested in accordance with law and whether at the time of such execution, the deceased had sound mind. The other question as regards title of deceased cannot be adjudicated in probate proceeding. The petitioner has already filed a title suit before Civil Court and so the revocation application has rightly been dismissed. The learned counsel in support of his contention has cited a ruling reported in AIR 1986 Rajasthan 24 and prayed to dismiss this writ application.

10. On going through the submission of both the parties, I find that the deceased Shankra Devi was admittedly owner of the property mentioned in Schedule A to C of probate application. She died in the year 1993 leaving behind her husband and a son. The petitioners purchased land mentioned in schedule-A of probate application from Gopal Prasad Agrawal by virtue of nine registered sale deeds dated 06.09.1996 and 07.09.1996. The petitioners claim that they got their name mutated and are in possession of the land along with structure thereon. The respondents on the other hand claim that their grandfather



executed a Will in their favour with respect to the property mentioned in Schedule A to C of the probate application.

11. According to the provision of section 263 of Indian Succession Act, the grant of probate or letters of administration may be revoked or annulled on the ground that the grant was made without citing parties who ought to have been cited and further that the Will of which probate was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case. The applicants of probate case admittedly included the property which was purchased by these petitioners from the father of respondents by virtue of nine registered sale deeds executed much earlier to the filing of probate application. The court below has not considered the legal proposition of law and without entering into the merit of the case, has summarily dismissed the miscellaneous case as not maintainable.

12. In view of above facts, the impugned order dated 22.06.2013 dismissing the Miscellaneous Case No. 1/2012 is not sustainable. Accordingly the impugned order is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27/03/2018
Transmission Date	

