

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.241 of 2017

In

Miscellaneous Appeal No.588 of 2012

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Kailash Poddar, son of Late Chandradeo Poddar, resident of Village- Chhoti Ballia, P.s.- Ballia, District- Begusarai.

... .. Petitioner/s

Versus

Anand Mohan Poddar, son of Late Ram Raksha Poddar, resident of Village- Chhoti Ballia, P.s.- Ballia, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kanhaiya Pandey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

9 13-12-2018 At an earlier occasion vide order dated 12.08.2016

Miscellaneous Appeal No.588/2012 was decided against which, petitioner has preferred SLP (c) No(s).9721/2017 and the same has been decided on 10.04.2017 by the Apex Court. For better appreciation the order is quoted below:

“Learned counsel for the petitioner argues that the High Court has made a factual error while observing that typed copy of the Will was filed after the original was lost. He submits that the said copy was filed along with the original Will on 01.10.1977. If that be so, more appropriate course of action for the petitioner is to approach the high with an application for review.



Granting the aforesaid liberty to the petitioner, this special leave petition is dismissed. In case, the High Court dismisses the review petition, it would be open to the petitioner to challenge the impugned order as well as the order passed in the review petition.

Pending application(s), if any, stands disposed of accordingly.”

In pursuance thereof, petitioner has filed instant petition for review.

In the background of submission which has been taken note of and further the, apex court has directed the petitioner to avail the privilege to review, on that very score, is the contention having at the end of the petitioner that the copy of Will was filed along with original Will on 01.10.1977, on which date, petition for probate was filed. As lower court record had already been transmitted to the lower court on account thereof, petitioner was directed to file relevant document, order sheet on supplementary affidavit. No order sheet (C.C.) has been filed. However, certified copy of petition dated 01.10.1977 has been filed wherein a prayer was made to keep the original Will under sealed cover. Another document i.e. certified copy of list of document dated 01.10.1977 has been filed which contains description of original will only. The certified copy of copy of the Will has also been filed which happens to be Ext.1 (with



objection) at the end of the petitioner which contains the seal of the court dated 03.10.1977.

Learned counsel for the petitioner has submitted that copy of Will was filed along with original Will on 01.10.1977 itself but, the same has not been incorporated in the list of document out of negligence and in likewise manner, on one pretext or other, it bore the seal of the court dated 03.10.1977 and for that, he has got no explanation.

That being so, whatever been submitted before the Hon'ble Apex Court at the end of the petitioner happens to be contrary to the factual position which the petitioner himself admits. The aforesaid eventuality was perceived at para-6 of the judgment and has been fully discussed from para-25 to 32.

Because of the fact that wrong fact was placed before the Apex Court whereupon, instant petition for review would not lie and is accordingly rejected.

(Aditya Kumar Trivedi, J)

Prakash Narayan

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