

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.166 of 2018

In

Miscellaneous Appeal No.123 of 2015

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Asha Lata Devi W/o Kapildeo Prasad Verma R/o village Chakdin P.O. Chakdin, P.S. Asthawan, District Nalanda at present residing at Village Sathopur, P.O. Maghra, P.S. Deep Nagar, Dist. Nalanda

... .. Defendant/ Appellant

Versus

1. Estate of Late Dilo Kuar @ Late Dilbaso Kuar
2. Abhay Kumar Singh @ Pappu Kumar
3. Abhishek Kumar @ Chhotu
both sons of Radhey Shyam Prasad.
4. Sarswati Devi wife of Radhey Shyam Prasad
All R/o village Sathopur P.O. Maghra P.S. Deepnagar, Dist. Nalanda.

... .. Plaintiffs/ Respondents

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Appearance :

For the Appellant/s : Mr. Raj Kishore Prasad Singh with Mr.
Mr. Bal Bhushan Chaudhary, Advocates
For the Respondent/s : Mr. Pramod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 11-02-2019

Heard learned counsel for the petitioner and the learned
counsel for the respondents.

The instant appeal arises out of the judgment dated 7.2.2015 passed by VIth Additional District Judge, Nalanda at Biharsharif in Probate case no. 10 of 2012/ Title Suit no. 04 of 2012 by which the registered deed of Will dated 19.10.2002 has been held to be valid and legal and the prayer made in the Probate Petition dated 19.5.2012 in the said case filed by the respondents has been allowed and granted probate after contest in Title Suit no. 4 of 2012.



Learned counsel for the appellant has submitted that appellant and respondent Nos. 2 to 4 have entered into compromise during pendency of this appeal. It has further been submitted that appellant, namely, Asha Lata Devi in the capacity of daughter of Late Dilo Kuer @ Dilbaso Kuer w/o Late Khosichand Mahto had filed a suit for partition of the entire properties left by her father in the Court of Sub Judge, Biharsharif which was registered as Title Suit no. 140 of 2012. After filing of the said Suit, the respondent nos. 2 to 4 filed Probate Case No. 10/2012 in the Court of District Judge, Biharsharif, Nalanda in respect of Will dated 19.10.2002 alleged to have been executed by Most. Dilo Kuer @ Dilbaso Kuer. The probate case being contentious was converted into Title Suit no. 4/12 and, ultimately, application for probate was allowed by 6th Additional District Judge Biharsharif, Nalanda in respect of the properties mentioned in the Will dated 19.10.2002.

By virtue of compromise arrived at by both parties outside the Court both parties agreed to file separate compromise petition in Title suit no. 140 of 2012 as well as in the First appeal which was converted from M.A. No. 123 of 2015 by order dated 28.11.2018 so that the matter of dispute may be finally set at rest. In pursuance of such agreement, both



parties have already filed written compromise petition on 11.8.2016 in Title suit no. 140/12 and on the same line present compromise petition has been filed so that the probate dated 7.2.2015 may be modified to the extent to which the appellant was allotted properties by compromise in Title Suit No. 140 of 2012.

The detail of the properties allotted to the appellant, as per compromise, has been mentioned in para 5 and 6 of the compromise petition. A prayer has been made to dispose of the present appeal in terms of compromise entered into between the parties. The impugned judgment and decree of the probate case be modified to the extent as mentioned in para 5 of the compromise petition and as per the relief claimed in the aforesaid petition.

Learned counsel for private respondent Nos. 2 to 4 have appeared and stated that compromise has been entered into between the parties. In support of the compromise, the appellant as well as the private respondent nos. 2 to 4 have all sworn affidavits, which are annexed with the compromise petition.

In view of compromise entered into between the parties, this First Appeal is disposed of with direction that probate granted by order dated 07.02.2015, is modified to the extent as



mentioned in para 5 and 7 of compromise petition. The compromise petition filed on behalf of the parties enclosed with the memo of appeal shall form part of this judgment.

Accordingly, this First Appeal is, disposed off.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.2.2019
Transmission Date	

