

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.937 of 2011

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DHANMANI DEVI, wife of Sri Baijnath Tiwary, resident of village,
Sidhyapur, P.S. Nawanager Anchal Nawanager, District, Buxar

.....Opposite parties /appellant/s

Versus

1 (i). Ram Darshan Chaubey

(ii). Ashok Kumar Chaubey

(iii) Bipin Bihari Chaubey

(iv). Sanjay Kumar Chaubey

(ii) (iii) and (iv) are sons of Sri Ram Darshan Chaubey

2. Sheo Kumari Devi, wife of Sri Jagdish Chaubey

Both resident of village Katal Pur, P.S. Nawanager Anchal Nawanager
District, Buxar

3. Tej Narain Ojha, S/o, Sri Ram Prasad Ojha, resident of village Ojha
Barun P.S. Murar (Old P.S Dumraon), Dist. Buxar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ravindra Kr Sinha No.2

For the Respondent no.3 : Mr. Sati Ranjan Jamaiyar

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-07-2019

Heard parties.

This appeal has been filed under Section 299 of Indian Succession Act for setting aside the judgment and order dated 22.9.2010 passed by Sub-Judge, Buxar passed in revocation case No.39/10 by which the probate granted in favour of appellant in probate case no.39/90 dated 1.10.92 has been revoked.

Respondent had filed an application for revocation of grant of letter of administration of will under Section 263 of Indian Succession Act to revoke the grant of letter of



administration in probate case no.39/90 dated 1.10.1992.

Respondent in their application stated that they came to know about grant of letter of administration of will in respect of properties of late Barmeshwar Ojha in favour of Dhanmani Devi in a probate case being probate case no.39/90 passed ex parte on 1.12.1992 and, thereafter, inspected the records of the probate case and found that same was obtained by misrepresentation and suppressing material facts and thereafter filed present petition for revocation of grant of letter of administration. The will which was produced by the respondent for grant of probate was a forged document and late Barmeshwar Ojha never executed said will.

Appellant was fully aware that respondents are nieces of deceased late Barmeshwar Ojha and natural successors but were not added as a party in said proceeding as near relatives of deceased as such the probate of will was obtained by practicing fraud and concealing the true facts. As such, the grant of letter of administration of the will is fit to be revoked.

Notices were issued to appellant Dhanmani Devi and she appeared and filed her show cause in which it was stated that present application for revocation of probate of will was time barred. Villagers and respondents were fully aware with



respect to probate proceeding and as such revocation case should be dismissed. The allegation that will is forged is not correct and late Barmeshwar Ojha in a fit state of mind and body executed the will in favour of appellant Dhanmani Devi and letter of administration was granted after due inquiry.

Respondents are illegitimate child of late Gauri Shankar Ojha born from illegal marriage and they have no right to inherit the property of their father and likewise they have no right to inherit the property of their uncle Barmeshwar Ojha.

No notice was required to be personally served on the appellant and notices under general citation was issued in accordance with law. Respondent had no right to inherit the property of testator and they had the right of maintenance during the lifetime of Gauri Shankar Ojha and after their marriage, they have no right of inheritance of the family property. Testator Barmeshwar Ojha had no right to execute a will in favour of respondents. After death of the testator, the name of appellant Dhanmani Devi was incorporated and substituted in place of testator Barmeshwar Ojha and thereafter rent was also paid by her and rent receipt was granted.

On the basis of rival pleading of the parties, the court framed issue “whether will dated 15.4.89 executed by late



Barmeshwar Ojha in favour of Dhanmanti Devi and on the basis of which, letter of administration was granted by the court by its order dated 1.10.92 was fit to be revoked”.

In support of their case for revocation of probate case, twelve witnesses were examined on behalf of applicant/respondent whereas eleven witnesses were examined on behalf of opposite party / appellant.

It was submitted on behalf of applicants / opposite party that they were the own sisters of opposite party / appellant and they have been shown as such in the application for grant of probate but no notices were ever issued and served upon them and notices were issued only under general citation and even that on a wrong address with an oblique motive that opposite party / applicant could not get any knowledge about the probate case and as such they could not have any knowledge about the probate case and same was obtained by suppression of facts and misrepresentation and keeping the probate court in dark. The alleged will was not executed by the testator and was obtained by practising fraud.

Opposite party / appellant stated that applicants / opposite party are not own sisters of opposite party/appellant Dhanmani Devi but they are illegitimate child of her father as



such they were not made as a party in the proceeding nor separate notices were issued to them and notices were issued as a general citation in the village Ojha Barao for general public.

The learned court below has held that in the application filed by Dhanmani Devi opposite party / appellant for grant of probate in probate case no.39/90, it is stated that testator Barmeshwar Ojha died leaving behind three nieces, i.e., Dhaneshwari Devi, Shivkumari Devi and Dahnmani Devi, all of the three are daughter of late Gauri Shankar Ojha and all of them are only relatives of testator Barmeshwar Ojha and, thereafter, address of Dhaneshwari Devi and Shivkumari Devi has been stated in para 3 of the petition as such, the court below has held that Dhanmani Devi, Dhaneshwari Devi and Shivkumari Devi all three are daughters of late Gaurit Shankar Ojha who was own brother of testator Barmeshwar Ojha as such, the stand of Dhanmani Devi / opposite party / appellant that Dhaneshwari Devi and Shivkumari Devi are illegitimate daughters of their father is contradicted by her own statement given in application for grant of probate of will giving rise to probate case no.39/90.

The trial court has further held that it is an admitted fact that in probate case no personal notice was ever issued and



served upon Dhaneshwari Devi and Shivkumari Devi and general citation which has been marked as Ext. B in probate case 39/90 addressed to general public, the notices under general citation has been issued to general public of village Ojha Baram and notices were served at different places of said village and from which it is apparent that no notice even under general citation was issued upon the general public of village Katalpur which has been shown as address of Dhaneshwari Devi and Shivkumari Devi in the application for grant of probate.

The court below has further held that there were two attesting witnesses of the will Brijbihari Ojha and Atrimuni Rai in probate case No.39/90 and Brijbihari Ojha was examined as an attesting witness to prove the will. It is true that under Section 68 of the Indian Evidence Act, there is requirement of at least one attesting witness for the purpose of proving due execution of the will, however, in present revocation case, appellant / opposite party stated that both the witnesses are dead which was objected by the applicant / opposite party that one of the attesting witnesses Atrimuni Rai was alive and attesting witness Atrimuni Rai was examined on behalf of applicant / respondent and who was cross-examined by the opposite party / appellant and opposite party / appellant deliberately



made a wrong statement before a court that both the attesting witnesses are dead and as such none of them can be produced on behalf of opposite party / appellant as an attesting witness to prove the due execution of will which raises suspicion about the genuinity and validity of the will itself and on due consideration of the evidences and materials available on record found that opposite party /appellant knowingly and deliberately made her own sisters Shivkumari Devi and Dhaneshwari Devi as a party in the probate case and no personal notice was ever issued or served upon them although they were the near relatives and they were required to be made party in the probate case and personal notice should be served upon them even notices as general citation issued was served upon the general public of a different village Ojha Barao and not upon the village Katalpur which was given as address of Dhaneshwari Devi and Shivkumari Devi and as such, grant of letter of administration was obtained by suppression and non-disclosure of material fact and playing fraud upon the court.

Secondly, the court below has held that a wrong statement was made before the court that both of the attesting witnesses were dead whereas same was objected by the applicant / opposite party and one of the attesting witness was



produced and examined by the applicant/opposite party before the court below and opposite party/appellant never denied that he was not the attesting witness and as such allowed the case filed by the applicant/opposite party and revoked the grant of letter of administration of will dated 1.10.1992 passed in probate case no.39/90.

After hearing the parties and considering the evidences and materials available on record, this Court does not find any illegality, irregularity or infirmity in the judgment and order passed by the court below and accordingly the present miscellaneous appeal is dismissed.

Let the LCR be returned forthwith to the court below.

Sanjay/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA

