

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.739 of 2017

Arising Out of PS. Case No.-2260 Year-2013 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Sumita Roy, Wife of Sunil Kumar Roy
 2. Sunil Kumar Roy, son of Late Baidyanath Roy
 3. Shishir Roy, Son of Sunil Kumar Roy

All Resident of Best Paradise, Flat No- 607, Plot No- 4, Sector-19, Dwarika , P.S. and P.O.- Dwarika , Sector- 23, District- South west , New Delhi

... .. Petitioner/s

Versus

1. State Of Bihar
2. Vijay Shankar Chaudhary Son of Late Harinandan Choudhary , resident of Vill- Barri Behta, P.S.- Pupri, District- Sitamadhi , Bihar, Present Address- Shri Krishna Puri, Ward No- 06, Dumri Court, P.S.- Dumri, District- Sitamadhi, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Prabhakar Mishra Mr. Randhir Kumar No. 1
For the State	:	Mr. Parmeshwar Mehta
For O.P. No. 2	:	Mr. Yugal Kishore Ms. Rupa Kumari

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 28-03-2019 Heard learned Counsel for the petitioners, learned Additional Public Prosecutor for the State as well as learned Counsel for the Opposite Party No. 2.

After granting probate with regard to unregistered Will, dated 17.01.2007, executed by Suniti Choudhary in favour of accused persons, this case has been filed by the complainant (Opposite Party No. 2), devar of aforesaid Suniti Choudhary,



alleging, *inter alia*, that by playing fraud, accused persons got this Will executed in their favour and further, have the Will probated after managing the affair. It has also been averred that after going through the Will, he has found the same having created by way of impersonating the deceased Suniti Choudhary.

Learned Counsel for the petitioners has submitted that once Will has been duly acknowledged by a competent court in accordance with law (Indian Succession Act), followed with grant of probate, then in that circumstance, unless and until there happens to be revocation of the same, no criminal proceeding could be initiated relating to the aforesaid document. That being so, the order impugned is fit to be set aside.

The learned Counsel for the Opposite Party No. 2 as well as learned Additional Public Prosecutor has submitted that the order impugned is just legal and proper, so, did not warrant interference. It has further been submitted at the end of the Opposite Party No. 2 that necessary steps have been taken in accordance with law to challenge the grant of probate.

Be that as it may, once the Will has been adjudicated upon and found to be genuine, whereupon probate has been granted, the criminal court should not interfere therewith in the



background of the fact that Criminal Court is not the Appellate Court nor could give any kind of finding relating to genuineness. That being so, the impugned order is set aside.

The petition is allowed.

(Aditya Kumar Trivedi, J.)

Prabhakar Anand/-

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