

IN THE HIGH COURT OF JUDICATURE AT PATNA
TEST CASE No.5 of 2014

=====

In The Good Of Late Smt. Nirmala Sinha

... .. Applicant

Versus

Xxxxxx

... .. Respondent

=====

Appearance :

For the Applicant : Mr. Sandhya Mishra, Advocate.

For the Respondent : Mr. Raj Nandan Prasad, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

15 12-07-2019

N.R. 1 Rajesh Kumar Sinha who is full brother of the applicant has filed caveat on 28.09.2015 and thereafter objection has been filed by him on 15.10.2015.

2. The caveator has caveatable interest in the properties of the Testatrix and as such the caveat is allowed and the objection is taken on record. The present proceeding is converted into testamentary suit and caveator is directed to be added as defendant to the suit. The objection filed by him shall be treated as written statement to the suit.

3. Learned counsel for the N.R. 1 raises a preliminary issue regarding non-maintainability of the present case and for which an application has been filed on 21.05.2018. Reference is made to the compromise dated 24.08.2017 (Annexure-2 of the application) entered into between the applicant and the N.R. 1 in the backdrop of an Anticipatory Bail Petition No. 429 of 2017 in



Complaint Case No. 1320 of 2017 preferred by the N.R. 1. The said compromise provided that the applicant/plaintiff herein would withdraw all other cases pending at Patna and Ranchi instituted by him. Such compromise agreement was taken note of vide order dated 14.11.2017 passed in Complaint Case No. 1320 of 2017 on which date the applicant herein was also physically present before the Court. It had been stated on behalf of the complainant (applicant herein) that he had entered into an agreement out of his own free will and accord and had no objection to grant of anticipatory bail to the N.R. 1.

4. Reply has been filed on behalf of the applicant to the aforesaid application filed by the objector N.R. 1/defendant. The fact of the compromise agreement dated 24.08.2017 having been entered into has not been denied. However, consent of the other two brothers namely, Mukul Kumar Sinha and Atul Kumar Sinha, N.R. 2 and 3, had not been obtained for such compromise. It is further submitted that the N.R. 1 has not complied with the complete allotment given to this applicant and as such the compromise has failed.

5. Learned counsel for the applicant relies on a Division Bench judgment of this Court in *Jugeshwar Nath Sahai and another vs. Jagtdhuri Prasad and others*, reported in *A.I.R. 1917 Patna 41*, which clearly laid down the principle that a compromise cannot be a basis for disposing of a probate



application.

6. Having heard the parties and on consideration of the materials on record, this Court is not inclined to agree with the submissions made on behalf of the N.R. 1. The issue at hand is squarely covered by the decision in Jugeshwar Nath Sahai's case (supra) wherein it has been observed as follows -

“It is well settled by authority that an application for probate cannot legally be disposed of by a compromise. The law imposes on the Court itself the duty of determining whether the will is genuine or not. It is quite clear therefore that the Court acted improperly in permitting the executors to withdraw the application for probate merely by reason of the compromise which was filed. O.23, R.1, Civil P.C. which says that a plaintiff may withdraw his suit or abandon a part of his claim therefore does not, in my opinion, apply to an application for Probate. It is the duty of an applicant for Probate to obtain the opinion of the Court upon the genuineness or otherwise of the will. He fails in his duty if he does not obtain the finding of the Court on the will : that being so, it is clear that the further provision in O. 23, R. 1, to the effect that if a plaintiff withdraws from a suit, he shall be precluded from instituting any fresh suit in respect of the same subject-matter, also does not apply”.

7. Learned counsel for the N.R. 1 has not been able to distinguish the said case from the present case nor show any subsequent binding decision to the contrary.



8. In the above circumstances, this Court has no hesitation in holding that by mere dint of a compromise entered into between the parties, the application for probate will not stand frustrated. The Court is called upon to determine the genuineness of the will through an application for probate and it is duty bound to do so. Such determination of genuineness of the will is a matter quite distinct and separate from the act of parties, which may have allocated the property in terms of a compromise entered into, among them.

9. In the above circumstances, the application filed by the N.R. 1 is devoid of merit and is dismissed.

(Vikash Jain, J)

lbrar//-

U			
---	--	--	--

