

IN THE HIGH COURT OF JUDICATURE AT PATNA
TEST SUIT No.2 of 2017

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1. Shri Sudhir Kumar,
2. Shri Sujit Kumar Alias Munna
3. Shri Ravinesh Kumar alias Tunnu
Sons of Shri Chandeshwar Singh, at present residents of Village-
Jatdumari, P.S. Poonpoo, P.O. Jatdumari, District- Patna

... .. Plaintiffs

Versus

Dr. Basant Singh S/o late Raghubir Singh, Moh- Goldhar, P.S. Gandhi
Maindan, Dist- Patna.

... .. Defendant

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Appearance :

For the Plaintiffs : Mr. Rai Shivaji Nath, Sr. Advocate.
For the Defendant : Mr. J.S. Arora, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 20-12-2019

I.A. No. 3415 of 2018

This interlocutory application has been filed with a prayer for rejecting the plaint/petition of Test Suit No. 02 of 2017 for grant of Letters of Administration of Will dated 19.08.2000 executed by late Ram Chandra Singh, under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act').

2. The short facts according to the defendant are that the testator Ram Chandra Singh executed a registered Will dated 19.08.2000 in favour of the three sons of his wife's brother Chandeshwar Singh, namely, Sudhir Kumar, Sujeet Kumar and Ravinesh Kumar. The said testator died issueless on 28.05.2001 after his wife Ram Sakhi Devi pre-deceased him on 16.05.1995. Prior thereto on 14.03.2001, Partition Suit No. 100 of 2001 was



filed by Raj Pati Devi, sister of the testator before the Court of Sub-Judge-I, Patna in which the testator appeared as defendant. On 17.04.2001, the plaint was amended and a compromise petition was filed by the testator in which it was stated that he has revoked and cancelled the registered Will dated 19.08.2000 which had been executed by him in favour of the three sons of his wife's brother. The compromise petition was accepted and the suit was decreed in terms of the compromise petition forming part of the final decree in terms of order dated 18.04.2001 passed in the said Partition Suit No. 100 of 2001 before the demise of testator on 28.05.2001. On the basis of the said decree, Eviction Suit No. 40 of 2001 was instituted before the Court of Sub-Judge-I, Patna at the instance of Raj Pati Devi which came to be decreed *ex-parte* on 29.11.2001, after taking due note of the compromise in the partition suit. Proceedings were undertaken by the authorities for handing over possession of the property to the decree holder as evident from the letter of the Superintendent of Police, Rural, Patna to the S.H.O., Punpun dated 16.03.2002 (Annexure-C). Mutation was also done in favour of Raj Pati Devi (Annexure-D). The property was mortgaged for a tractor loan to Raj Pati Devi who duly repaid the loan as evident from the no dues certificate dated 14.06.2013 (Annexure-E).

3. Learned senior counsel Mr. J.S. Arora appearing on behalf of the defendant submits that Test Suit No. 02 of 2017 has



become infructuous and no fruitful purpose will be served in allowing the same to continue. It is submitted that the test suit has been filed for grant of Letters of Administration in respect of the Will dated 19.08.2000 which itself has been revoked and is no longer in existence in terms of the decree dated 18.04.2001 passed in the partition suit. It is submitted that any challenge to the decree in the partition suit has become hopelessly barred by limitation and such decree has therefore attained finality. Nothing prevented the plaintiffs from challenging the compromise decree by instituting a suit if they were aggrieved, notwithstanding that Letters of Administration had not yet been granted in respect of the Will. In any event, grant of Letters of Administration upon finding the Will to be genuine would be of no avail to the plaintiffs, inasmuch as such order would have to be revoked or annulled on the ground that the Will itself had been revoked, as contemplated under Section 263 of the Act. Reliance has been placed on the following decisions –

- a) *Suresh Singh and Another Vs. Dr. Raja Ram Singh and Others, 1992 (2) PLJR 129*
- b) *Sneh Gupta Vs. Devi Sarup and Others, (2009) 6 SCC 194*
- c) *Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, AIR 2004 SC 2093*

4. Mr. Rai Shivaji Nath, learned senior counsel appearing for the plaintiffs, on the other hand, submits that the test suit



cannot be declared infructuous at this premature stage. The plaintiffs were not a party to the compromise between the testator and his sister Raj Pati Devi and as such they had no knowledge about the decree in the partition suit. Besides, they had no locus to challenge the compromise decree until after grant of Letters of Administration. It is submitted that even if it were possible to institute a suit challenging the compromise decree, the plaintiffs would be well within their rights to defer the same until after grant of Letters of Administration. It is submitted that if the test suit be held to be infructuous at this stage, it would deprive the plaintiffs from contesting the compromise decree as well as the decree in the eviction suit on merits. The issue of the compromise between the testator and his sister Raj Pati Devi, as well as the facts involved in the eviction suit, were matters to be proved by leading evidences, for which the plaintiffs have had no opportunity and they cannot be precluded from exercising such right.

5. Having heard the parties and on careful consideration of the materials on record, I find merit in the contentions of the defendant. It is not in dispute that the testator and his sister Raj Pati Devi had entered into a compromise and accordingly a compromise petition was filed in the partition suit which was decreed, having regard to the revocation and cancellation of the registered Will executed by the testator in favour of the plaintiffs. It is also not in dispute that Raj Pati Devi succeeded in evicting the



plaintiffs pursuant to the decree dated 29.11.2001 in Eviction Suit No. 40 of 2001. I am therefore unable to accept the contention of the plaintiffs that they had no knowledge about the compromise decree, and even if not at the time of its passing, then at least at the time the plaintiffs were evicted on the basis of the decree in the eviction suit which clearly referred to the compromise decree in the partition suit. It is further not in dispute that Raj Pati Devi was in possession of the suit property in respect of which mutation had been made in her name and receipts issued to her.

6. In paragraph-12 of the decision reported in the case of *Suresh Singh and Anr. Vs. Dr. Raja Ram Singh and Ors., 1992 (2) PLJR 129*, a Division Bench of this Court has categorically held that *“a legatee or executor of an unprobated Will making a claim on the basis of the same can institute a suit or take a defence in a suit on the basis of such a Will, but his claim cannot be established in a court of law unless and until a probate or letters of administration is granted meaning thereby that neither any decree can be passed in favour of a plaintiff nor defence can be accepted in such a suit unless probate or letters of administration is obtained before its disposal.”*

7. The Hon'ble Apex Court in its decision in *Sneh Gupta Vs. Devi Sarup and Others, (2009) 6 SCC 194* referred to its earlier decision in *State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1*, in paragraph-10 whereof it was unequivocally observed as follows-



“10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time-limit expires the court cannot give the declaration sought for.”

8. A cumulative reading of the above two decisions leaves no manner of doubt that the plaintiffs were required to challenge the compromise decree in the partition suit within the period of limitation. The contention of the plaintiffs that it was optional to challenge the compromise decree and they were necessarily required to await the grant of Letters of Administration, cannot be accepted. I am also unable to accept the contention of the plaintiffs that they did not have knowledge of the compromise decree as the very basis of their eviction was the compromise decree. Even if benefit of doubt be given to the plaintiffs for the moment, it is a matter of record that the defendant Dr. Basant Singh had filed his objection petition on 02.12.2010 in the present proceeding annexing copies of the judgments in Title Partition Suit No. 100 of 2001 and Eviction Suit No. 40 of 2001, in view of which the plaintiffs cannot claim ignorance at least at that stage. If the plaintiffs chose not to challenge the decrees within the period of limitation, they did so on their own risk and to their detriment.



9. I also find substance in the submission of the defendant that an infructuous proceeding ought not to be allowed to continue. It was held in paragraph 25 of the decision in *Shipping Corporation of India Ltd., Vs. Machado Brothers and Others*, AIR 2004 SC 2093 as follows -

"25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the Court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the Court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the Court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

10. At this stage, it is necessary to refer to the decision of this Court in *Most. Prabhawati Kunwar Vs. Kumari Devi*, 2018 (3) PLJR 154 relied upon by the plaintiffs, wherein in paragraph-12 it has been held as follows -

"12. It is the settled principle of law that at the time of deciding the probate case right, title and interest in the property in question is neither considered nor decided in favour of the applicants of the said case rather only genuineness of the Will, testamentary capacity of the testator to execute the Will and due attestation of Will are to be considered. Right, title and interest regarding



the plot in question is to be decided in Title Suit No. 390 of 1996 pending between the parties, considering the facts and circumstances of the case and evidence adduced by the parties in the said case.”

11. There can be no gainsaying the general proposition of law laid down in the aforesaid case. However, in the facts of the present case, it will be a futile exercise to allow the test suit to continue inasmuch as even if the Will is found to be genuine, such Will stood revoked in terms of the compromise decree in the Title Partition Suit No. 100 of 2001 which has not been challenged by the plaintiffs within the period of limitation and has thus attained finality. So also, if Letters of Administration were granted in respect of the said Will, the same would only be required to be revoked in terms of Section 263 of the Act.

12. In view of the above discussion, therefore, I hold the proceedings of the present test suit to have become infructuous. I.A. No. 3415 of 2018 stands allowed and Test Suit No. 2 of 2017 stands disposed of as infructuous.

(Vikash Jain, J)

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