

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.982 of 2016

Pratima Devi W/o Sanjay Kumar, Resident of Village Sarva, P.S. Barbigha,
Dist- Sheikhpura at present residing at Mohalla Tootwari, P.S. - Kotwali Dist
Gaya.

... .. Appellant/s

Versus

The State Of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kr. Sinha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-07-2019

Heard the parties.

2. This miscellaneous appeal has been filed for setting aside the judgment and order dated 19.04.2016 passed by A.D.J. VII, Gaya in Probate Case No. 07/2015/27/1999 by which the application of applicant/appellant for grant of probate has been dismissed.

3. Appellant had approached the court of District Judge for grant of probate of the will dated 12.06.1998 executed by Gajbadan Singh in favour of the applicant/appellant.

4. Testator Gajbadan Singh died on 16.04.98 and he had bequeathed his all properties in favour of applicant/appellant by the said will which was subsequently duly registered. It is further case of appellant that after death of testator the will was



duly presented and registered on 28.08.98 by the District Registrar, Sheikhpura. Subsequently a partition suit No. 22/98 was filed in which applicants/appellants were also parties in the court of Sub-Judge 1st, Sheikhpura in which by order of injunction, the court had restrained, the Registrar of the Registration office not to permit withdrawal of said original will during pendency of suit. It has been further contended that after death of testator on 16.06.98 properties as detailed in will in schedule-I and II of the will came in possession, management of applicant/appellant as per wishes of testator of said will.

5. Probate court had examined 12 witnesses on behalf of applicant/appellant. Certified copy of will dated 12.06.98 executed by Gajbadan Singh in favour of Smt. Pratima Devi who is the wife of nephew of testator Gajbadan Singh was produced alongwith death certificate and memorandum of family management which were marked as Exhibit-3.

6. The application for grant of probate has been rejected by the probate court only on the ground that the original will was not produced before the Probate court, as such mandatory requirements of attestation of will by two attesting witnesses could not be proved, as such, no probate could have been be granted to the applicant/appellant, however, counsel for



the appellant states that same was an error of record and has drawn attention of this Court towards order dated 17.02.2011 that original will was transmitted by the registry office of Sheikhpura to the probate court on 17.02.2011 and same finds recorded in the order sheet of said date, as such the very basis and reasoning for dismissing the probate case on the ground that in absence of original will, probate cannot be granted, is error of record.

7. Under facts and circumstances of present case, the order dated 19.04.2016 is set aside and the matter is remitted to the concerned court to consider the application for grant of will to the applicant in accordance with law.

8. The appeal stands allowed.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.07.2019
Transmission Date	N.A.

