

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.570 of 2015

In
TEST CASE No.2 of 2014

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1. Pushpa Sinha, Wife of Late Krishna Kishore Sinha. Resident of 9 Patliputra Colony, Police Station - Patliputra, Town and District - Patna, at present residing at Flat No. 93, Tower H DLF Park Place, DLF City Phase - 5, Sector Gy, Gurgaon - 1220022.
 2. Smt. Seema Dayakriti @ Smt. Seema Prasad. Daughter of Late Krishna Kishore Sinha and Wife of Major Pushkar Prasad (now retired Colonel). Resident of 9 Patliputra Colony, P.S.- Patliputra, District - Patna, presently residing at Flat No. 93, Tower H, DLF Park Place CLF City Phase - 5, Sector Gurgaon - 122002.

... .. Appellant/s

Versus

1. Sri Vivek Sinha
2. Sri Abhishek Sinha.
Both sons of legal heirs of Late Bimal Sinha. Resident of 9 Patliputra Colony, P.S.- Patliputra, District - Patna.
3. Smt. Vinita Sinha. D/o Late Bimal Sinha. 9, Patliputra Colony, P.S.- Patliputra, District - Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Dudh Nath Singh, Adv.
For the Respondent/s	:	Mr. J.P. Singh, Adv.

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 27-11-2020

Heard the parties.

This Letters Patent Appeal has been filed for
setting aside the judgment and order dated 15.01.2015 passed in
Test Case No. 02 of 2014 (Pushpa Sinha & Anr. Vs. Sri Vivek



Sinha & Others) passed by learned Single Judge of this Hon'ble Court dismissing the petition of appellant for revocation of Letters of Administration granted in favour of Late Bimal Sinha in Test Suit No. 06 of 1997.

Briefly stated the facts of the case is that plaintiff and defendant no.1 of the Test Suit No. 06 of 1997 are own brothers and sons of Late Parmeshwari Prasad Sinha who was a government servant and share holder member of Patliputra Co-operative House Construction Society Ltd. and he was allotted Plot No. 09 by said society measuring 17.55 kathas in the year 1960 upon which he constructed a double storied house and died in 1961 leaving behind his widow Parwati Devi and two sons namely, Krishna Kishore Sinha and Bimal Sinha and a daughter Renu Lal.

Testatrix Parwati Devi executed Will on 12.09.1973 and she died in the year 1980 and Test Case for grant of Letter of Administration was filed in the year 1997 by propounder of the Will Bimal Sinha in whose favour the Will was executed of the entire property.

Learned Single Judge on the basis of documentary and oral evidence found registered Will dated 12.09.1973 to be genuine and executed by the Testatrix with her own free will



and in a sound state of mind and accordingly Letters of Administration of the Will dated 12.09.1973 was granted in favour of plaintiff by his order dated 15.01.2003.

Record of the Testamentary Suit No. 06 of 1997 was examined by learned Single Judge in Test Case No. 2 of 2014 and it was found that Late Krishna Kishore Sinha the solitary near relative of the Testatrix appeared on 26.09.1997 but thereafter abandoned the case and proceedings remained uncontested and dismissed petition of the appellant seeking revocation of the Will by judgment and order as impugned.

This Court does not find any error or infirmity in the order dated 15.01.2015 passed in Test Case No. 02 of 2014 seeking revocation of the Will dated 12.09.1973.

It is submitted on behalf of appellants that a Title Partition Suit between the parties with respect to joint family property including the property in the Will is pending before the Court of Sub-Judge, Patna, being Title Partition Suit No. 122 of 1997 which was filed prior to filing of Testamentary Case No. 03 of 1997 converted into Testamentary Suit No. 06 of 1997 in which it has been pleaded that property was acquired by Late Parmeshwari Prasad Sinha out of his own income who died in 1961 intestate and appellants and defendants inherited said



property and have equal shares in said property.

It is a settled proposition of law that in a testamentary suit only the genuinity and validity of the Will is decided and title of the testatrix in the bequeathed property is not a subject matter for adjudication in Testamentary Suit.

This court does not find any error or infirmity in the order passed by learned Single Judge order dated 15.01.2015 passed in Test Case No. 02 of 2014 accordingly, the L.P.A. is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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

