IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 2358 of 2019

Harischandra Dhobi ... … Petitioner

Versus

1. Mahendra Dhobi
2. Nakul Dhobi
3. Sahdeo Dhobi
4. Krishna Dhobi
5. Suresh Dhobi
6. Jitni Dhobi
7. Bhagia Dhobi
8. Naresh Dhobi

… …Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner :- Mr. Sanjay Kumar Pandey, Advocate
For the Respondents :-

Order No. 07 **Dated: 08.12.2020**

The present case is taken up through video conferencing.

2. At the request of the learned counsel for the petitioner, the defects, as pointed out by the office, are ignored.

3. The present writ petition has been filed for quashing/setting aside the order dated 16.01.2019 (Annexure-5 to the writ petition) passed by the District Judge-IV, Giridih in Probate Case No. 09 of 2008 whereby the proceeding of the said probate case has been converted to original title suit.

4. Learned counsel for the petitioner submits that Daso Dhobi son of Late Kheman Dhobi had executed a registered will in favour of the petitioner on 15.01.1982 and after his death the petitioner filed Probate Case No. 09 of 2008 however the learned court below converted the proceeding of the said probate case to original title suit without appreciating the fact that the Will executed by Late Daso Dhobi in favour of the petitioner is a registered one and as such there was no question of doubting the execution of the said Will particularly in view of the fact that Daso Dhobi was issueless.

5. On perusal of the content of the writ petition including the impugned order dated 16.01.2019 passed by the learned court below, it appears that it was contended by the opposite parties of the probate case before the learned court below that Daso Dhobi had, in fact, cancelled the Will dated 15.01.1982 during his lifetime. It was also submitted that wife of Harish Chandra Dhobi had purchased the

part of the land from the wife of Daso Dhobi after the execution of the alleged Will. The learned court below having found that the very basis of filing of the probate case by the petitioner i.e. the Will, was put to challenge by the opposite parties, held that the probate case was not maintainable and thus the proceeding of the same was converted to original suit under Section 295 of the Indian Succession Act, 1925.

6. I have gone through the provisions of Section 295 of the Indian Succession Act, 1925 which provides as under:-

> "295. Procedure in contentious cases - In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant".

7. The aforesaid provision explicitly provides that the moment the proceedings become contentious, they pertake the character of a suit. In the case in hand, the opposite parties appeared after issuance of notice and filed their objection to the claim of the petitioner and claimed that the said Will was forged and fabricated. They also claimed that the property mentioned in the alleged Will was purchased by Harish Chandra Dhobi in the name of his wife from the wife of Daso Dhobi. It was further claimed that a Miscellaneous Petition was filed by Daso Dhobi before the S.D.M. Giridih on 25.03.1983 wherein she claimed that the petitioner got the said Will by playing fraud under the influence of his father Laljit Dhobi. Considering the aforesaid fact, I am of the considered view that the proceeding of the Probate Case No. 09 of 2008 having become contentious, the court below rightly converted the same to the title suit by invoking the provisions of Section 295 of the Act, 1925.

8. Hence, I find no infirmity in the order dated 16.01.2019 passed by the District Judge-IV, Giridih in Probate Case No. 09 of 2008. The writ petition being devoid of merit is, accordingly, dismissed.

Ritesh/- **(Rajesh Shankar, J.)**