

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1683 of 2018

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Rajesh Rai S/o Shree Ramlakhan Rai, Resident of Village-Paroo Mallahtoli,
P.S.-Paroo, Dist.-Muzaffarpur.

... .. Petitioner/s

Versus

1. Sarita Devi W/o Shree Ramesh Kumar Sah, Resident of Vill and P.O. and
P.S. Paroo Dist Muzaffarpur.
2. Munni Devi, W/o Shree Maheshwar Sah Dist-Muzaffarpur.
3. Prabha Devi, W/o Ashok Kumar Sah, Dist-Muzaffarpur. null

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satish Chandra Jha-3
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 13-10-2022 The petitioner has challenged the order dated 19-07-2018 passed by learned ADJ-14th, Muzaffarpur, in Probate Case No. 22 of 2008, whereby the petition filed by the petitioner under Order 1 Rule 10 read with Section 151 of the C.P.C. for his impleadment in the Probate Case has been rejected.

The submission of learned counsel for the petitioner is that petitioner has purchased a piece of land pertaining to R.S. Plot No. 7854 in R.S. Khata No. 793 having an area of 12 decimals by registered sale deed dated- 12-05-2008 and accordingly came into possession upon the land in question. The petitioner has purchased the said land from the daughters of late Yogendra Sah, who executed an unregistered Will in favour of Sarita Devi on 15-11-2005 and after death of Yogendra Sah on



14-05-2006 the respondent no. 1 filed the probate case in the court of District Judge, Muzaffarpur on 24-06-2008 bearing Probate Case No. 22 of 2008.

The contention of the petitioner is that in the aforesaid probate case filed by the respondent no. 1 only the daughters of late Yogendra Sah namely, Munni Devi and Prabha Devi have been made party from whom the petitioner has purchased the land which is the subject matter of the Probate Case and accordingly he is necessary party in the Probate Case.

I have heard learned counsel for the petitioner and perused the impugned order. A probate can be granted only to an executor appointed by the Will and citations are necessary to be made to only those who claim through or under the Will or deny or dispute the execution.

It is settled law that the court of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind.

The only issue in a probate proceeding relates to the genuineness and due execution of the Will. The probate court



does not decide any question of title and / or the existence of the property itself.

The petitioner in the present case is claiming to be the purchaser of the property involved in the probate case and admittedly the daughters of the testator late Yogendra Sah have already been made parties and are contesting the grant of probate being the near relatives.

On the objections filed by the near relatives the probate case has been directed to be registered as original suit vide order dated 21-07-2007 bearing Original Suit No. 19 / 2017.

The plaintiff-respondent no. 1 is the *dominus litis* also and is opposing the impleadment of the petitioner as a party in the probate case filed by her.

In the aforesaid background, conspectus of facts and discussions held hereinabove, I am of the opinion that the impugned order passed by learned A.D.J. 14th, Muzaffarpur is not liable to interfered with.

Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

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