

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.283 of 2016

Victor Joseph son of Late Sri Joseph Natal by faith Christian by Occupation Service resident of Mohalla-Christian Quarter, Bettiah Town, Ward No. 8, P.O. and P.S. Bettiah, District-West Champaran.

... .. Appellant/s

Versus

Srimati Kaushalaya Devi wife of Shankar Prasad Sah by caste Teli, by occupation business, resident of Mohalla-Teliya Tola, P.O. + P.S. Motihari, District – East Champaran at present Mohalla-Christian Quarter, Bettiah Town, Ward No. 8, P.O. and P.S. Bettiah, District- West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ram Kishun Prasad, Advocate Mr.Binod Kumar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 01-12-2022 Heard Mr. Ram Kishun Prasad as also Mr. Binod Kumar on behalf of the appellant.

2. The appellant is aggrieved by the order dated 1.2.2016 in Probate Case No. 06 of 2009 passed by learned Additional District and Sessions Judge-VI, Bettiah at West Champaran.

3. Smt. Kaushalya Devi had preferred Probate Case No. 06 of 2009 with the following relief :

(i) the father of the present opposite party/appellant executed an unregistered Will in favour of the applicant/respondent with respect to the properties residential home on 14.2.2009;



(ii) that the Testator was a retired Teacher who died on 5.4.2009 residing with the applicant in his self-acquired residential house and being pleased with the service rendered by the applicant, he executed the Will;

(iii) after the death of Testator, the applicant came into physical possession of the residential house without any interference;

(iv) however, the opposite party later started interruption in peaceful possession of the applicant and as such this Probate Case has been filed, the Will under reference is the last Will of the Testator;

(v) the opposite party/appellant filed his written statement stating that his father Joseph Natal never executed any Will rather it is a forged and fabricated document with a view to grab his 15 dhur residential land;

(vi) the applicant was residing as tenant and only to grab the property, the Will under reference has been prepared in a forged and fabricated manner and it does not contain the signature of his father and the witnesses and the identifier are in collusion with the petitioner.

4. Vide order dated 1.2.2016 the learned Additional District and Sessions Judge-VI, West Champaran, Bettiah



accepted that the Will dated 14.9.2009 is valid and genuine. However, in view of the Section 213(1) of the Indian Succession Act with specific reference to Sub-Section 2, the same will not be applicable on the Mohammedans or the Indian Christians.

5. The relevant paragraphs of the order dated 1.2.2016 of learned Court is quoted hereinbelow :

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25-Admittedly testator Joseph Netal was a "Christian" and Section 213(1) of the Indian Succession Act prescribes that no right as executor or legatee can be established in any Court of Justice, unless a court of competent jurisdiction in INDIA has granted probate of the "Will" under which the right is claimed but sub-section (2) of this section further prescribes that "The section shall not apply in the case of "Wills" made by Mohammedans or Indian Christians---". Thus, there is no provision of grant of Probate in case of the "Will" executed by a Christian.

26. In view of the aforesaid clear provision



of law this probate case is not maintainable.

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27. As this probate case is not maintainable under the law and thus applicant is not entitled to get probate in her favour.

6. A bare perusal of Section 213 of the Indian Succession Act fortifies the version given by the learned Court and which is quoted hereinbelow :

Right as executor or legatee when established.—

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

2[(2) This section shall not apply in the case of Wills made by Muhammadans 3[or Indian Christians], or and shall only apply -

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are



of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the 4[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.

7. The Sub-Section 2 would further show that it does not apply in the case of Wills made by the Mohammedans or Indian Christians.

8. Having gone through the facts of the case and an perusal of the order, this Court does not find any error in the order dated 1.2.2016 passed by the learned Additional District and Sessions Judge-VI, West Champaran, Bettiah and as such, the same is hereby dismissed.

9. Learned counsel for the appellant submits that liberty may be given to him to seek remedy, if any, before an



appropriate Court.

10. It goes without saying that the appellant has all the liberty to seek any remedy that is available to him under the law of the land against the respondent herein.

11. The M.A. No. 283 of 2016 stands dismissed.

(Rajiv Roy, J)

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