

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.486 of 2021

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Bhawana Bhardwaj Wife of Dr. Ajay Kumar Bhardwaj Resident of Village-
Farda Tola, Shivampur, Police Station- Naya Ram Nagar, District- Munger,
Presently residing at M.I.G.H 305, Lohia Nagar, Police Station- Kankarbagh,
District- Patna.

... .. Petitioner/s

Versus

1. Sangeeta Sinha Wife of Deepak Kumar Sinha Resident of Village- Sherpur,
Post Office and Police Station- Chhapra, District- Saran, presently resident
of House No. A/164, People s Co-Operative Colony, Kankarbagh, Police
Station- Kankarbagh, District- Patna.
2. Amar Kumar Son of Late Arjun Kumar Sinha Resident of House No. A/164,
People s Co-Operative Colony, Kankarbagh, Police Station- Kankarbagh,
District- Patna.
3. Deepak Kumar Sinha Son of Late C.N. Sinha Resident of Village- Sherpur,
Post Office and Police Station- Chhapra, District- Saran, presently resident
of House No. A/164, People s Co-Operative Colony, Kankarbagh, Police
Station- Kankarbagh, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S.Arora, Sr. Advocate Mr.Manoj Kumar Mr. Gaurav Pratap
For the Respondent/s	:	Mr. Rajoday Satyjeet Mr.Sourendra Pandey

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

7 22-06-2022 The present civil miscellaneous application has been

filed by the petitioner challenging the order dated 30.10.2021,

passed by the learned Additional District Judge-VIIIth, Patna in

Probate Case No. 98 of 2015, whereby the learned Additional

District Judge has rejected the caveat petition filed by the

petitioner.

I have already heard the parties.



The brief facts of the case is that one Kusum Kumari had acquired Plot No. A/164 from People Co-operative House Construction Society Ltd. Kankarbagh for 99 years lease on 01.04.1968 and built a house thereon. Said Kusum Kumari entered into an agreement for sale on 25.01.2008 with the petitioner in regard to the aforesaid property for a consideration money of Rs. 25 lacs. The earnest money was paid. But the said Kusum Kumari did not pay heed to the requests of the petitioner to execute the sale deed after receiving the balance amount. Kusum Kumari persistently avoided the requests of the petitioner. Having no option, the petitioner filed a suit for specific performance of contract as Title Suit No. 176 of 2008. During the pendency of that suit, Kusum Kumari died and her grandson Deepak Kumar Sinha and his wife Sangeeta Sinha, opposite party nos. 1 and 3 were added as parties to the said suit. The said suit was decreed vide judgment and decree dated 27.04.2018, passed by the court of learned Sub Judge-IV, Patna. Pursant to that decree, the sale deed was executed in favour of the petitioner through the process of the court on 11.09.2019 and the petitioner has acquired absolute right title and interest. It has been averred in the petition that Kusum Kumari contested the above mentioned suit by filing a written statement, objecting the



claim of the petitioner for specific performance, but in her written statement she has not stated the story about execution of the alleged will deed in favour of respondent no.1.

Respondent no.1 filed probate case being Probate Case No. 98 of 2015 impleading her husband Deepak Kumar Sinha as opposite party no.3 and one Amar Kumar, son of late Arjun Kumar Sinha as opposite party no.2 in that probate petition. As per the recitals of probate petition, late Kusum Kumari executed her last registered will in favour of Smt. Sangeeta Sinha, respondent no.1 on 23.09.2002 in respect of the above-mentioned property. It has been stated in the probate petition by respondent no.1 that late Kusum Kumari was married to one Jwala Prasad, but she had no any issue from the wedlock of her husband and after his death Kusum Kumari was growing old and suffered with various old age-related ailments and the petitioner with her husband attended and cared her, due to which late Kusum Kumari had bestowed her best love and affection to respondent no.1 and thus executed the will in her favour. Kusum Kumari died on 26.01.2009 at her residential house No. 164A, Type-B, situated in Peoples Co-operative Colony, P.S.Kankarbagh.

Mr. J.S.Arora, the learned Senior Counsel for the



petitioner has submitted that the learned court below has committed gross illegality as well as jurisdictional error while rejecting the application of caveat filed by the petitioner. He has submitted further that the petitioner and the testatrix Kusum Kumari entered into an agreement for sale regarding the property which is the subject matter of the probate case. As the testatrix avoided executing the sale deed, as such the petitioner filed Title Suit No. 176 of 2008. In that suit, respondent no.1 and her husband respondent no.3 were parties. They were signatories to that agreement for sale as witnesses. The suit was decreed in their presence on 27.04.2018 and not only the suit was decreed but in pursuance of that decree, a sale deed was executed in favour of the petitioner by process of the court. He has next submitted that the testatrix Kusum Kumari filed written statement in Title Suit No. 176 of 2008, but she did not whisper about the existence of the will dated 23.09.2002. The said will deed is forged and fabricated. If an opportunity of being heard is not provided to the petitioner, there is no one to contest the case. As per the submission of the learned counsel, except the petitioner, there is none who can bring the fact before the court to prove the fact that the deed of will was false and fabricated. The petitioner has an interest through title in the probate case



and the learned court below has wrongly held that the petitioner has no caveatable right. The learned counsel has also submitted that as per the recitals of the probate petition, respondent no.1 had entered into an agreement with one Amar Kumar (respondent no.2) to sell the property in question and she has impleaded him as opposite party no.2. He has submitted next that when Amar Kumar, who is said to be a party to agreement for sale with the respondent no.1 (petitioner in probate case) has been impleaded, as to why the vendee of Kusum Kumari, the testatrix should not be impleaded and why she should not be given an opportunity of being heard?

The learned counsel for the petitioner has relied upon a decision of this Court in the case of *Ekta Sahkari Grih Nirman Samiti Ltd. Patna vs. The Estate of Late Ram Parichan Singh and others*, reported in 2013(1) PLJR 944. This Court in paragraph no.5 of that decision has been pleased to hold as follows:-

“In view of the above submission of the parties, it is admitted fact that the property originally belonged to late Ram Parichan Singh. He died on 20.5.1999 leaving behind only his widow, Jipato Devi. Jipato Dvi sold the property to the petitioner on 4.12.2000. It is also admitted fact that in



the probate proceeding, Jipato Devi was not shown as opposite party in the probate application. At paragraph 10, Jipato Devi was shown as only near relative. From perusal of the supplementary affidavit which is not controverted by the respondent, it appears that although the probate application was filed much earlier but then the same was defective and no duty money was paid. On the direction of the court, the defects were removed and duty money was paid and thereafter the probate case was admitted on 17.3.2001. Thereafter, notices were issued on the near relatives as notice of general citation and then Jipato Devi appeared on 20.4.2001. Therefore, prior to that, she had no knowledge about the proceeding and she had already sold the property to the petitioner. On her objection, challenging the genuineness of Will said probate proceeding was converted to title suit no. 9 of 2003.”

This Court in case of *Ekta Sahkari Grih Nirmal Samiti Ltd.* (supra) has allowed the caveat petition filed by the petitioner in that case who was the vendee of Jipato Devi, wife of Late Ram Parichan Singh, the testator.

The learned counsel for the petitioner has submitted



that the present case is on better footing as the petitioner is the vendee of the testatrix herself. He has submitted further that every person who has an interest in the property of the testator has a right to file caveat petition in a probate proceeding. He has drawn my attention towards Section 283 (1) (c) of the Indian Succession Act, 1925, hereinafter to be referred to as 'the Act', which is being quoted hereunder:-

“(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.”

The learned counsel for the petitioner has further submitted that above-noted provision itself shows that the expression of the Section is “to call upon all persons” claiming to have any interest in the estate of the deceased. This Section does not speak about specific person who is entitled to file a petition for caveat. The phrase mentioned in this sub-section ‘all persons claiming to have any interest in the estate of the deceased’ means any person who has interest in any way in the estate of the deceased, has a statutory right to file a caveat petition.

Per contra, the learned counsel for the respondents has



submitted that in various decisions it has been settled law that ordinarily near relative of the testator is entitled to file a caveat petition. By relying upon a judgment of Hon'ble the Supreme Court in the case of *Krishna Kumar Birla vs. Rajendra Singh Lodha and other*, reported in (2008) 4 SCC, page 300, he has submitted that in that decision the Hon'ble Supreme Court has been pleased to hold that 'a person who would have succeeded to the testator's estate in case of intestate succession would ordinarily have a caveatable interest and any person claiming any interest adverse to the testator or his estate cannot maintain any application before the probate court and his remedy would be elsewhere.' In reply, the learned counsel for the petitioner has submitted that the word 'ordinarily' mentioned in the above mentioned decision does not mean that the person who would have succeeded to the testator's estate in case of intestate succession would only has a caveatable right. The word 'ordinarily' should not be taken/construed as 'necessarily' or 'only'.

The learned counsel for the respondents has submitted further that in the above mentioned decision, the Hon'ble Supreme Court has observed that 'it may be noticed that the testator might have entered into an agreement of sale entitling



the vendee to file a suit for specific performance of the contract. On the basis thereof, however a caveatable interest is not created. A transferee *pendente lite* without the leave of the court would not have a caveatable interest'. In reply, learned Senior counsel for the petitioner has submitted that the petitioner is not only having agreement for sale with the testatrix but also he is a decree holder and in pursuance of the decree, the sale deed has been executed in her favour. He has submitted further that if Mr. Amar Kumar, respondent no.2, who is alleged to have an agreement with respondent no.1, has been impleaded by herself in probate petition, why the petitioner should not be impleaded? He has also submitted that it is Mr. Amar Kumar, respondent no.2, who is responsible for the entire game behind curtain in creating a forged and fabricated will deed and this fact has been taken note of by the learned Sub Judge-IV, Patna, while passing the decree in Title Suit No. 176 of 2008.

After hearing both parties, I am of the view that if an opportunity of being heard is not provided to the petitioner, she will be deprived of her valuable rights. As per the expression of Section 283(1) (c), all the persons claiming to have any interest in the estate of the deceased have caveatable right. The word "ordinarily" mentioned in the case of *Krishna Kumar Birla*



(supra) should not be construed as ‘necessarily or ‘only’.

The learned counsel for the respondents has also submitted that against the judgment and decree dated 27.04.2018 passed in Title Suit No. 176 of 2008, a first appeal being F.A.No.83 of 2018 is pending in this Court.

Merely pendency of F.A.No. 83 of 2018 in this Court, in my view, cannot snatch away the opportunity of being heard of the petitioner, by filing a caveat application.

On the basis of above-mentioned observations, the order dated 30.10.2021, passed by the learned District Judge, VIIIth, Patna in Probate Case No. 98 of 2015 is set aside. Caveat petition dated 23.04.2019 filed on behalf of the petitioner is hereby allowed.

Accordingly, this civil miscellaneous petition is allowed.

(Nawneet Kumar Pandey, J)

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