

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1017 of 2017

1. Shambhu Prasad
2. Mohan Prasad
3. Rameshwar Prasad All are sons of Late Bhola Raut
4. Chandra Kali Devi Wife of Late Bhola Raut
5. Rita Kumari
6. Geeta Kumari
7. Babi Kumari
8. Gayatri Devi All are D/o Late Bhola Raut Resident of Village - Gopalpur, Balua Chowk, P.O. P.S. Nagar, Motihari, District - East Champaran, Motihari.

... .. Appellant/s

Versus

1. Manoj Kumar Son of Late Shankar Raut
2. Shanti Devi Wife of Late Shankar Raut
3. Indu Devi D/o Shankar Raut
4. Ashok Raut @ Ashok Kumar Son of Nathuni Raut Resident of Village - Gopalpur, Balua Chowk, P.O. P.S. Nagar, Motihari, District - East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sharda Nand Mishra, Advocate
For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 01-12-2022

I.A. No. 01 of 2019.

The aforesaid Interlocutory Application has been preferred to inform the Court that original appellant, Bhola Raut died on 29.6.2003 and his heirs are already on record as appellants having filed the appeal.



Accordingly, prayer has been made to keep the said facts on record.

In the particular facts and circumstances, the I.A. No. 01 of 2019 is hereby allowed.

M.A. No. 1017 of 2017:

Heard Mr. Sharda Nand Mishra, learned counsel for the appellants.

2. The present appeal has been preferred by the appellants challenging the order dated 18.9.2017 passed by the Fast Track Court No. 2, East Champaran at Motihari in Probate Case No. 03 of 2001/08 of 2017 by which the learned Court rejected the application filed by the appellants for grant of probate inter alia on the ground that the same is premature in view of the fact that even as per the Will, the two wives were entitled to live in the dwelling house during their life time.

3. The appellants herein are heirs of late Bhola Raut who filed Probate case on the basis of Will dated 6.2.2000 executed by the Testator, Ram Chandra Prasad, his brother with regard to the 1/3rd share in the dwelling house as narrated hereinbelow:-

*7 Dhurs joint dwelling house standing near Khesra
167 appertaining to Khata No. 11 situated in*



Mohalla-Gopalpur, Balua Chauk, P.S.-Motihari Town, Dist. East Champaran bounded and butted as North:- Ramdeo lal, South-Deonandan Ram, East-District Board Road, West-Braj Bihari Singh (1/3rd share).

4. The matter was heard, issues framed and the learned Court after taking note of the fact that in the Will executed by Ram Chandra Prasad, the Testator had made provision that his two wives will reside in the same house during their lifetime.

5. The learned Court took note of the fact that there is nothing on record that both the ladies are now no more. Accordingly, the following order was passed :

"9. I do not find any pleading made by the applicant that his two wives are alive or dead. No death certificate of two wives of the testator is on record to show that they are dead. Under the aforesaid facts and circumstances discussed above, this Court find that the application filed by the application is prematured and the application is not maintainable as the applicant has got no cause of action at this stage. The applicant is directed to file application for probating the deed after the death of his two wives of testator, so that the intention of the maker of the



deed can be protected. It is paramount duty of the Court to take care intention of the maker of the deed as the maker of the Will is not present in the Court when the will is filed in the Court for grant of probate. Under the aforesaid facts and circumstances stated above this Court find that the application filed by the applicant is not maintainable and the same is hereby dismissed.

10. So far as decision of other issues are concerned, this court has already observed that the application filed by the applicant is prematured and the applicant will have cause of action to file the case for grant of probate after death of two wives of the testator. So when the next application will be filed the Court will decide the genuineness of the Will.

11. In result, the application filed by the applicant for grant of probate is hereby dismissed on contest."

6. Mr. Sharda Nand Mishra, learned counsel for the appellant although tried to challenge the order passed by the learned Court, he failed to provide answer on the fact whether both the wives of Testator, Ram Chandra Prasad are dead or alive and in the event of they being alive, whether the course undertaken was premature or not.

7. In view of the aforesaid facts, the learned Court rightly held that the Probate case filed by the father of the



appellants herein is/are premature and thus rejected the same.

8. This Court does not find any merit in the appeal
and the same is accordingly dismissed.

(Rajiv Roy, J)

Ravi/Ajay-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2022
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