

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.16 of 2019

1. Arvind Kumar and Anr Son of Late Dr. Shruti Lal Mandal
2. Arun kumar Son of Late Dr. Shruti Lal Mandal both Residents of Plot No. 29/14, Road No. 25, Sri Krishna nagar, Police Station - budha Colony, Town and Distt. Patna.

... .. Petitioner/s

Versus

1. Smt. Shashi Mishra and Ors Wife of Late Dr. Jagat Mishra
2. Rubi Mishra Daughter of Late Dr. Jagat Mishra
3. Rupa Mishra Daughter of Late Dr. Jagat Mishra All Residents of B-70A, Nirala nagar, Police Station- hasanganj, Town and Distt.- Lucknow Uttar Pradesh.
4. Anita Kumari Daughter of Late Dr. Shruti Lal Mandal, Wife of Dr. Pranay Raj Sharan Sinha, R/V- Resident of Flat No. D-404, Charminar Apartment, Road No. 11, Rajendra nagar, police Station - Kadamkuan, Town and Distt. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Pankaj Maijorwar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

11 02-11-2023 The present application has been filed for quashing the order dated 03.12.2018 passed in Title Suit No. 06 of 2016 passed by learned Additional District Judge-VII, Patna by which, the application filed by the plaintiffs-petitioners for amendment of the plaint has been rejected.

2. Title Suit No. 06 of 2016 arising out of Probate Case No. 07 of 2010 which was filed by Smt. Ram Pyari Devi



(mother of the petitioners) in respect of grant of probate for the Will executed by Dr. Jagat Mishra. The property under the Will has been bequeathed in favour of Smt. Ram Pyari Devi, her successors, executors and administrators and she was also named as executor in the said Will.

3. Dr. Jagat Mishra had also delivered the possession of the said land to the said Ram Pyari Devi who had constructed a triple storied pucca house and continued to live therein with her family members and was in exclusive possession of the said property.

4. After filing of the aforesaid probate case, Ram Pyari Devi died and initially her husband Dr. Shruti Lal Mandal was substituted at her place and after his death the sons and daughters of said Ram Pyari Devi and Dr. Shruti Lal Mandal were substituted in their place with the consent order dated 02.04.2014 and the petitioners were pursuing the said case.

5. After death of Ram Pyari Devi and her husband, the petitioners wanted to modify the relief of the probate case so as to seek grant of letter of administration in place of grant of probate as the petitioners are not the executors of the Will and after the death of the executor, they applied for the same which was opposed by the respondents and the application has been



dismissed by the impugned order dated 03.12.2018.

6. Learned Senior Counsel for the petitioners, Mr. Arora has relied upon the judgment of the Hon'ble Supreme Court in the case of *Sambhu Prasad Agrawal and Ors. vs. Bhola Ram Agrawal (2000) 9 SCC 714, Smt. Vatsala Srinivasan vs. Shyamala Raghunathan and Anr. (2016) 13 SCC 253*, the judgment in this Court passed in the case of *Maheshwar Narayan Sukla and Ors. vs. Bhajan Narayan Singh* in Civil Miscellaneous No. 46 of 2018 and the judgment in the case of *Mostt. Sunaina Kuer and Ors. vs. Bikram and Ors.* in Test Suit No. 05 of 2015.

7. Learned counsel for the respondent has opposed the application and prayer for the petitioners and have submitted that the impugned order is justified and the application of the petitioner has rightly been rejected in view of the death of the executor and now the petitioners cannot be allowed to convert the probate case into a case for grant of letter of administration.

8. Mr. Aruni Singh relied upon a division bench judgment of this Court in the case of Rakesh Bihari Saran vs. Alka Saran and Ors. in L.P.A. No. 1370 of 2014.

9. I have considered the submissions of the parties, it is not in dispute that the Will in question is said to have been



executed in favour of Ram Pyari Devi and her legal heirs, successors, executors and administrators. After the death of Ram Pyari Devi her husband was substituted in her place.

10. The contention of the respondents are that the petitioners have no right and interest of the said property and if they want a letter of administration should be issued in their favour and they can file another case for grant of letter of administration and no amendment can be permitted in this case.

11. Paragraph no. 5 of the judgment of the Hon'ble Supreme Court in the case of ***Sambhu Prasad Agrawal and Ors. vs. Bhola Ram Agrawal (supra)*** reads as follows:

5. We find that it is not disputed that Matadin Agarwal was a legatee under the will. It is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate, However, this did not debar his heirs to get the probate petition amended. The trial court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration. Since considerable time has elapsed, we feel that



the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground.

12. Paragraph No. 6, 7 and 8 in the case of *Smt. Vatsala Srinivasan vs. Shyamala Raghunathan and Anr.* (*supra*) are quoted hereinbelow:

6. In view of law laid down in the aforestated judgments, the Division Bench observed that both the proceedings with regard to the probate and the letter of administration are of the same nature and therefore, the proceedings cannot abate. The essence of both the proceedings is the same and they relate to ascertainment of genuineness and authenticity of the will. By considering the aforestated judgments, the Division Bench has rightly confirmed the view b expressed by the learned Single Judge.

7. We also agree with the view expressed by the Division Bench of the High Court, which has followed the judgment delivered in Govind M. Asrani, as the logic behind dismissing the appeal, in our opinion, is just and proper. In any case, so as to establish the will, the probate proceedings are required. The function of the executor is to execute the will. The main purpose can be very well achieved by obtaining a letter of administration so that the property can be administered by the administrator as per Section 232 of the Succession Act. 1925. In the instant case, the said practice has been rightly followed.

8. We are also in agreement with the view expressed in the impugned judgment, which has also relied upon law laid down in Jadeja Pravinsinhji Anandsinhji, in which it has been held: (SCC OnLine Guj paras 6 & 9) "6....An executor, in the capacity of an executor, has no personal interest in the



estate of the deceased.... The object of the executor in these proceedings is to get an adjudication not of any dispute in which he is

personally interested but the object is to propound the will of the deceased for the benefit of those who take an interest in the will.

9. It is, therefore, clear that an executor in applying for probate is not fighting a personal action but fighting for the interests of all the beneficiaries under the will. Therefore the action of an executor in applying for a probate is not in substance a personal action and as observed earlier by me the maxim actio personalis moritur cum persona could not apply to such a case. If the executor fails in his duty, any of those whom he represents are entitled to intervene and carry on the proceedings with a "formal modification" that the prayer must then be for letters of administration with the will annexed."

13. The contention of the learned counsel for the respondents in effect that the probate proceeding have come to an end after death of the executor and if the petitioners want the grant of letter of administration, they can file another separate case for grant of administration meaning thereby that the respondents want multiplicity of proceeding and want the probate case to abate for initiation of a fresh proceeding by the petitioners.

14. After hearing the parties and after considering the judgments relied upon by the parties, I am of the view that the only question which has to be decided is that in a probate



case or in the case for grant of letter of administration is the genuineness of the Will. In these circumstances, I am also of the view that multiplicity of proceedings has to be avoided for the benefit of both the sides. Both the sides should thresh out the dispute in the pending proceeding and they should not be forced to litigate by initiating a fresh proceeding. My view is supported by the various judgments which have been relied upon by the learned senior counsel for the petitioners.

15. The amendment application dated 26.10.2018 is allowed.

16. The Court below is directed to conclude the proceeding within six months of communication of this order without granting unnecessary adjournments to either sides and will proceed *ex parte* against the non-cooperating party.

17. The Court below challenge to any interlocutory order, this Court will not operate as automatic stay of the further proceedings in the Court below.

(Sandeep Kumar, J)

Guddu/-

U			
---	--	--	--

