

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.228 of 2015

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Rahul Kumar Singh Son of Yudhisthir Singh Resident of Village Indaur, P.S. Dinara, District Rohtas, At present resident of Village Sowan, P.S. Dumraon, at present P.S. Krishna Brahma, District Buxar.

... .. Appellant

Versus

1. Chandra Kanta Devi Wife of Arun Kumar Singh resident of Village Tardih, P.O. and P.S. Kanethi, District Allahabad U.P.
2. Maya Devi Wife of Satya Narayan Singh Resident of Village Gaighat, P.S. Varanasi, District Varanasi U.P.
3. Madhuri Devi Wife of Judhisthir Singh Resident of Village and P.O. - Sowan, P.S. - Krishna Braham, District - Buxar.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Devi Das Srivastava, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 17-01-2023 Heard learned counsel for the appellant.

2. The appellant is aggrieved by and dissatisfied with the order dated 02.06.2015 passed by learned Sub-Judge I-Buxar in Revocation Probate Case No. 23 of 2007 whereby and whereunder the learned Sub-Judge has been pleased to allow the application and revoke the probate granted in favour of the appellant in Probate Case No. 23 of 2007 and send the records to the court of learned District and Sessions Judge for contest after preserving a copy of the order.

3. Learned counsel for the appellant does not dispute that Sabitri Devi who had executed the Will in favour of Rahul Kumar Singh had three daughters. The present appellant is



Rahul Kumar Singh who is the son of one of the daughters of Sabitri Devi. When he filed the Probate Case, he did not implead the daughters of Sabitri Devi who were Class 1 legal heirs, hence, there being no citation of the legal heirs of the testator, no notice was issued to them and the probate was granted in favour of the appellant without there being any citation issued on the Class 1 legal heirs of the testator Sabitri Devi.

4. Learned counsel for the appellant has relied upon the judgment of this Court in the case of **Kanhaiya Missir and Others Vs. Dinanath Missir** reported in **1963 SCC Online Pat 90**. It is submitted that in this case no fraud was committed by the appellant and nothing was suppressed by him. According to him, since the Will was executed in favour of the appellant, the other daughters of Sabitri Devi were not required to be cited in the application under Section 276 of the Indian Succession Act.

5. This Court having heard learned counsel for the appellant finds that the contention as advanced would not succeed. Sections 276, 278, 283 and Section 263 are to be read together to correctly come to a conclusion as to whether or not the three daughters of the testator Sabitri Devi were required to be cited in the petition. Those Sections are being reproduced



hereunder for a ready reference:-

“276. Petition for probate.- (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating-

- (a) the time of the testator's death,
- (b) that the writing annexed is his last Will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner's hands, and
- (e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state,-

- (a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
- (b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

278. Petition for letters of administration.-

(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating-

- (a) the time and place of the deceased's death;
- (b) the family or other relatives of the deceased, and



their respective residences;

(c) the right in which the petitioner claims;

(d) the amount of assets which are likely to come to the petitioner's hands;

(e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

283. Powers of District Judge.-(1) In all cases the District Judge or District Delegate may, if he thinks proper,-

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;

(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.

(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued



the citation.

263. Revocation or annulment for just cause.-

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.-- Just cause shall be deemed to exist where-

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

- (i) The Court by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties who ought to have been cited.
- (iii) The will of which probate was obtained was forged or revoked.
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a latter will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.”

6. The necessity to cite the parties who ought to be



cited may be found under illustration no. (ii). The three daughters of Sabitri Devi being Class I legal heirs ought to have been cited. The illustration no. (ii) directly applies in this case.

7. So far as the judgment cited on behalf of the appellant is concerned, this Court finds that in the case of **Kanhaiya Missir** (Supra), one of the co-sharers namely Indradeo Missir had executed the Will in the year 1952. His widow had applied for letters of administration with respect to the said Will which was granted in her favour on 18th April, 1953. Thereafter in 1958 the appellant had filed a title suit praying for a declaration that the sale deed executed by the widow in favour of one Dinanath Missir was not supported by the legal necessities and was, therefore, not binding on the plaintiffs as the reversioners of Indradeo Missir. On 29th May 1959, Dinanath had filed a written statement in the suit in which reference was made to the Will and to the grant of letters of administration in favour of Indradeo's widow, thereafter the plaintiffs filed a petition under Section 151 CPC praying that the grant of letters of administration on 18th April, 1953 may be recalled. The learned District Judge found that there had been a partition among the brothers of Indradeo Missir in the year 1940 by way of a registered deed of partition dated 27.01.1940 in



which the parties were Rajendra Missir, father of the appellants and widow of Indradeo Missir. The will in question was mentioned in that deed of partition and the fact of partition after the death of Indradeo Missir, between Rajendra and the widow has been admitted by Kanhaiya Missir, one of the appellants in the case before the Hon'ble Court. Under these circumstances, the learned District Judge held that the existence of the Will and the grant of letters of administration were known to the applicants for a long time before the filing of the written statement by Dinanath. The Court, therefore, refuses to accept the appellant's case that they had come to know for the first time about the Will and the grant from Dinanath's written statement. The Court also found that the widow had taken all steps she had then thought necessary before obtaining a grant of letter of administration in her favour. The learned Court, therefore, recorded that no fraud had been perpetrated by the widow in obtaining the grant and nothing was suppressed by her. In that context, this Court held that "even if the appellants were persons who should have been appraised of the proceeding in 1952-1953, mere omission to issue citation to them cannot be an absolute ground for revoking the grant made in 1953. On the facts found by the learned District Judge I am not in a position



to hold that he exercised his discretion erroneously in refusing to revoke the grant made on the 18th of April, 1953. Therefore, in my opinion, the appeal is without merit and it must be dismissed with costs.”

8. Apparently, the judgment in the case of **Kanhaiya Missir** (Supra) has been rendered in a completely different facts situation. The fact that Sabitri Devi had left behind her three Class I legal heirs who were not cited in the application and no citation was issued to them before grant of probate would put this case in a different category. This would amount to suppression of the material fact in order to mislead the court.

9. This Court, therefore, finds no infirmity in the impugned order.

10. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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