

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.831 of 2022

Upendra Singh S/o Late Ramotar Singh Resident of Mauza- Nipania, Pargna-Malki, P.S. Teghra at present Phulwaria, Sub- Division and Sub- Registry- Teghra, District- Begusarai. (Executer)

... .. Petitioner/s

Versus

Kedar Singh s/o Late Sri Ram Singh Resident of Mauza- Nipania, Pargna-Malki, P.S. Teghra at present Phulwaria, Sub- Division and Sub- Registry- Teghra, District- Begusarai. (Intervener)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi Mr. Alok Kumar
For the Respondent/s	:	Mr. J.S. Arora Mr. Ravi Bhatia

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 09-10-2023

Heard the parties.

2. This application has been filed for quashing the order dated 01.08.2022 passed by Sub-Judge I, Begusarai whereby and wherein the intervention petition filed by the intervener-respondent has been allowed and he has been added as opposite party in Probate Case No. 21 of 2019.

3. The Probate Case No. 21 of 2019 was filed in respect of the Will of late Shiv Autar Singh, who died on 29.11.2006. The will was executed in favour of one Upendra Singh i.e. the present petitioner. Upon filing of the aforesaid probate case, the Court below vide order dated 22.02.2021 issued a general notice and paper publication and upon confirmation of the process, the case was posted for evidence. After more than one year of confirmation of the general notice and paper publication, the respondent Kedar Singh filed an



intervention application on 28.03.2022 which was opposed by the petitioner by way of filing his rejoinder on 25.04.2022. In the intervention petition, the intervenor-respondent has stated that one Hemnath Singh was common ancestor of the intervenor-petitioner and also the petitioner Upendra Singh who died leaving behind his two sons namely Ramadhir Singh and Chanchal Singh and both the brothers jointly came in peaceful possession of the landed properties left by their father and Ramadhir Singh became Karta and Manager of the joint family and further Chanchal singh died unmarried and issueless with jointness with his brother Ramadhir Singh. Thereafter, Ramadhir Singh died leaving behind his three sons Ramotar Singh, Shivotar Singh and Sri Ram Singh and after death of Ramadhir Singh, his eldest son Ramotar Singh became Karta and Manager of joint family but later on when Ramotar Singh fell ill and Shivotar Singh became Karta and Manager of joint family governed under the Mitakshara School of Hindu law and said Shivotar Singh, the Karta and Manager of joint family after selling of joint family properties and also from the income fund and nucleus of joint family acquired the land mentioned in Schedule-I of the Probate Petition through several registered sale deeds and all member of joint family jointly came in



uninterrupted peaceful possession over the land which is fully detailed in Schedule I of the probate petition with perfect right and title.

4. It has also been stated that Ramotar Singh died in jointness of his brothers Shivotar Singh and Sri Ram Singh leaving behind his four sons namely Vishanudeo Singh, Upendra Singh (the petitioner), Surendra Singh and Prem Shankar Singh. Out of them Vishanudeo Singh died leaving behind his son Jitendra Singh @ Nepal Singh. Shivotar Singh fell seriously ill and then Upendra Singh became Karta and Manager of joint family with his uncle Sri Ram Singh, cousin brother Kedar Singh, Sikandar Singh own brothers Surendra Singh, Premshankar Singh and nephew Jitendra Singh @ Nepal Singh. It has also been mentioned that due to illness Shivotar Singh died issuess on 29.11.2005 in jointness with his brother Sri Ram Singh and nephews as his class II heirs and share of late Shivotar Singh devolved upon his brother Sri Ram Singh as per Section 8 of the Hindu Succession Act 1956.

5. In the intervention petition filed by the intervenor-respondent it has further been stated that Sri Ram Singh Died on 06.01.2019 leaving behind his two sons namely Kedar Singh (the respondent herein) and Sikandar Singh. It has



further been contended that Shivotar Singh died intestate and had never executed any Will and the alleged Will, on the basis of which the petitioner has filed the instant probate case is based on forged, fabricated and void documents.

6. It has also been contended that the descendants of Hemnath Singh are jointly residing and there is no partition amongst the heirs of Hemnath Singh including the petitioner Upendra Singh and the respondent Kedar Singh as yet and all the descendants of Ramadhir Singh including the respondent are necessary party to the probate case and without adding the intervenor in the probate case, the same cannot be decided.

7. Learned counsel for the petitioners has relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Kanwarjit Singh Dhillon Vs. Hardayal Singh Dhillon and Ors.*** reported in ***AIR 2008 SC 306***, more particularly paragraph no. 10 of the aforesaid judgment. The relevant part of paragraph no. 10 of the aforesaid judgment reads as under:-

It is well settled law that the functions of a probate Court are to see that the Will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue inference and the same was duly attested. It was, therefore, not competent for the probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his Will. The



probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the Will were joint ancestral properties or acquired properties of the testator.

8. Learned counsel for the petitioner also relies upon a judgment of the Hon'ble Supreme Court in the case of ***Ishwardeo Narain Singh Vs. Kamta Devi and Ors.*** reported in ***AIR 1954 SC 280***. It would be relevant here to quote paragraph no. 2 of the aforesaid judgment which reads as under:-

The dismissal of the application for probate on the ground that the disposition in favour of Thakurji is void for uncertainty can on no principle be supported and indeed learned counsel appearing for the respondent has not sought to do so. The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing Probate Court. It is surprising how this elementary principle of law was overlooked by both the Courts below. However, as learned counsel appearing for the respondents has not sought to support this ground nothing further need to be said on that.

9. Learned counsel for the petitioner has further relied upon a judgment of the Rajasthan High Court passed in the case of ***Smt. Parvati Devi @ Kaushalya Vs. Chittarmal*** reported in ***AIR 1986 (Raj) 24***. It would be relevant to quote



paragraph No. 5 and 11 of the aforesaid judgment which reads as follows:-

5. Thus, the Madras High Court held that a caveator is neither plaintiff nor defendant and cannot be mere citation be allowed to convert a probate proceeding into a suit for resolving disputed title.

11. The provisions are very clear. The Probate Court is only concerned with the question as to whether the document forwarded as last will of the deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had sound mind. The other question cannot be agitated in probate proceedings. I do not find any force in the submission made by the learned counsel for the petitioner and, held that the caveator cannot challenge the title of testator or testatrix to the disputed property in the probate proceedings. However, it is clarified that in a regular suit before the court of competent jurisdiction the caveator can raise the question about the title qua the deceased. The probate generally does not come in the way in the matter of decision of title between the disputed parties.

10. Learned counsel for the petitioner has also relied upon a judgment of this Court in the case of ***Ram Lochan Saran Vs. Sri Balmukund Yadav and Ors.*** reported in ***2006(4) PLJR 65*** and has submitted that it is well settled that the plaintiff is master of his own litigation and if any person wants to assert and establish his right, he is at liberty to file an appropriate suit in this regard and he is interested in asserting



and establishing his right, it is for him to file an independent suit but he certainly cannot intervene in the present suit because the plaintiffs seek no relief as against him.

11. Learned counsel for the petitioner further relies upon the judgment of this Court rendered in the case of ***Pritama Kaur Vs. Sardar Balwant Singh Ranuwalia*** reported in **2007 (3) PLJR 789**. It would be relevant to quote paragraph nos. 6 and 12 of the aforesaid judgment which reads as under:-

6. *To the contrary Mr. J.S. Arora relied on the judgment of this court in AIR 1995 Patna 122 [1995(1) PLJR 814] (In Re: Late Rajo Singh Ramautar Singh alias Ganesh Shanker) which has taken note of both the aforesaid judgments. In my view, the only question in the present application is as to who is the person competent to file a caveat in terms of Section 284 of the Indian Succession Act. Firstly, it is well settled that probate proceedings are proceedings not certifying the validity and legality of the disposition made in the testamentary instrument. It is a proceeding only to certify genuineness and authenticity of the testamentary instrument. The validity and legality of disposition made therein has to be tested in separate proceeding.*

12. *Having heard the arguments and considered the matter. I am of the view, firstly, that a person to seek the challenge validity of the Will simplicitor cannot be held to be made a party to the proceeding as a caveator. This is so because probate proceedings is only a proceeding to certifying the genuineness of execution of the Will but not as to the legality of the contents thereof. A Will can validly be probated but when it is relied on for any testamentary succession*



the same can be declared invalid for want of authority or other reasons.

12. Learned senior counsel for the respondent Mr. J.S. Arora has submitted that the geneology table is not in dispute and it is also not in dispute that the respondent is a member of the same family but purposely he was not impleaded in the category of near relative so that the probate of the property in question may be illegally obtained by the petitioner. He further submits that except giving bald statements, nothing has been brought on record by the petitioner which can show that there had been partition in the joint family property.

13. By making the aforesaid submissions, learned senior counsel for the respondent has submitted that there is no illegality and infirmity in the impugned order by which the intervention petition filed by the respondent has been allowed.

14. In support of his submissions, learned counsel for the respondent has relied upon a judgment of this Court rendered in the case of ***Narayan Sah Vs. Sm. Devak*** reported in ***AIR 1978 Patna 220***. It would be relevant to quote paragraph no. 10 of the aforesaid judgment which reads as under:-

“Keeping in my mind the aforesaid principle laid down in different cases discussed above let me examine as to whether in the present case it can be said that the petitioner has any right to enter caveat. I have already given in detail the



claim of the petitioner. He has actually claimed interest in the whole property under the will executed by Inder Kuer. It is also not in dispute at the Bar that in Anurago Kuer the testator would have died intestate then the property would have come to Inder Kuer as the co-widow by the right of survivorship and the latter would have become entitled to the whole of the property. If that be so, it cannot be disputed that the said Inder Kuer could make a will with regard to the whole property, in favour of the petitioner who is her sister's sons. It is stated at the Bar and which fact is not disputed that the petitioner has already applied for grant of a probate of the will executed by Inder Kuer in his favour which is pending in the court of the District Judge, Muzaffarpur in probate case No. 23 of 1973. Inder Kuer, in fact entered caveat in the probate case filed by the opposite party, but unfortunately she died during the pendency of that case. In the facts and circumstances discussed above, therefore, it is clear that the petitioner is certainly interested to safeguard his interest which he has got under the will which has given rise to probate case No. 23 of 1973 and which is pending. It cannot, therefore, by any stretch of imagination be said that the petitioner has no interest which gives sufficient right to the petitioner. The petitioner has right to enter caveat in the present probate case filed by the opposite party. The court below therefore acted illegally and with material irregularity in the exercise of its jurisdiction in holding that the petitioner has no locus standi to oppose the grant of probate or the letters of the will executed by Anurago Kuer. It is further held that the impugned order if allowed to stand would cause irreparable injury to the petitioner.”

15. I have considered the submissions of the parties and also perused the materials available on record. In the



present case, the facts are not in dispute that the petitioner has not disputed the genealogical table and also not disputed the fact that the respondent is the member of the same family and he was not impleaded in the category of near relative. The petitioner has also not brought on record any document to show that there had been partition in the joint family property and certain properties acquired by testator late Shiv Autar Singh was from the joint nucleus fund. It is well settled law that any person having slightest of interest in the suit property has to be heard and should be heard in an appropriate proceeding. Therefore, this Court does not find any illegality in the impugned order by which the intervention petition filed by the respondent has been allowed by the Court below.

16. Accordingly, this application stands dismissed.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	05.03.2024
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