

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.785 of 2022**

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Dinesh Kumar Singh, S/o Late Banaras Singh, R/o Village Hathdar, P.S. Gaurichak, Dist. Patna.

... .. Petitioner/s

Versus

1. Brij Bhushan Singh, son of Late Mishri Singh, R/o Village Harpur, Hathder, P.S. Phulwari Sharif, Now gaurichak, Dist. Patna.
2. Shashi Bhushan Singh, son of Late Mishri Singh, R/o Village Harpur, Hathder, P.S. Phulwari Sharif, Now gaurichak, Dist. Patna.
3. Vijay Singh, S/o Late Lakhan Singh, R/o Village Harpur, Hathder, P.S. Phulwari Sharif, Now gaurichak, Dist. Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman, Advocate
For the Respondent/s : Mr. Upendra Prasad II, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 18-04-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the Order dated 24.09.2022 passed by learned Additional District Judge XXI, Patna in Probate Case no. 107 of 2018 by which he dismissed the petition dated 31.01.2022 filed on behalf of petitioner praying therein to implead him as intervenor opposite parties in the said probate case.

3. The respondents have instituted Probate Case no. 107 of 2018 for grant of probate of Will dated 26.10.1999 executed by Ram Rati Devi in their favour.



4. The petitioner filed an application on 31.01.2022 under Order 1 Rule 10 (2) of the Code of Civil Procedure praying therein that he may be permitted to intervene in the probate case. However, the same has been rejected by the learned court below.

5. The claim of the petitioner is that one of the Plot No. 830 of Khata No. 341 has been mentioned as property of the testator in the said Will in Schedule 1 of the probate petition which is the property of the petitioner / intervenor. It is claimed that the said Plot No. 830 was purchased by the father of the proposed intervenor from one Tulsi Singh, who was the owner of the said property and a decree of title has already been passed in favour of the father of the intervenor vide judgment and decree dated 24.06.2016 of the Court of learned Sub Judge VIII, Patna.

6. The petitioner / intervenor claimed ownership of the said land and accordingly prayed to implead him as a party in the said Probate Case. The said petition was objected by the probate petitioner that right, title and interest in the property is neither considered or decided in Probate Case rather only genuineness of the Will and due attestation of the Will is to be considered. Even if the claim of the petitioner is genuine, the



same cannot be decided in this Probate Case. He has further submitted that there is no scope for deciding any dispute as regard title in probate proceeding.

7. Learned counsel for the petitioner submits that the learned court below failed to consider that Tulsi Singh one of the co-sharer, is the husband of Ram Rati Devi the testator, had already sold 12 decimal of Plot No. 830 in favour of the father of the petitioner namely Banaras Singh vide sale deed dated 17.06.1970 and delivered possession over the vended land, mutation was done, and rent receipts for paying rent to State of Bihar is being issued to him and his title has already been declared by the Sub Judge VIII, Patna in Title Suit No. 969 of 2012 vide judgment and decree dated 24.06.2016 and till date the same has not been set aside by any Court of Law. Further, it is submitted that the learned court below without any cogent reason rejected the petition of the petitioner who is the necessary party for proper adjudication of the case.

8. Learned counsel for the petitioner referred and relied on the judgments of this Court in **Raj Kumar Prasad Vs. Bandana Kumar @ Soni** reported in **2013 (2) PLJR 684**, and **Ekta Sahkari Giri Nirman Samiti Limited Patna Vs. The Estate of late Ram Parichan Singh** reported in **2013 (1) PLJR**



944 to show that the application of the petitioner therein to implead him as a party was allowed and the petitioner therein was added as a party in the probate proceeding. Learned counsel for the petitioner also referred and relied upon the judgment of Hon'ble Supreme Court in **Narinder Singh Rao Vs Air Vice Marshal Mahinder Singh Rao and Ors. (2013) 9 Supreme Court Cases 425** on the point that if testator bequeathing property by Will in excess of her own share then Will has to be treated as bequeathing property only to the extent of share held by testator.

9. On the other hand, learned counsel for the respondents submits that the sale deed executed by the said Tulsi Singh is forged and fabricated document as such there is no title or right of Banarsi Singh over the said plot no. 830. It is further submitted that Ram Rati Devi executed a deed of Will dated 26.10.1999 in favour of the probate petitioner which is valid and there is no scope to implead the stranger as intervenor because the stranger cannot be impleaded as intervenor in the probate proceedings. The aforesaid decree dated 24.06.2016 was passed ex-parte against which they have filed the Civil Miscellaneous Case No. 7 of 2016 to set aside the ex-parte judgment under Order 9 Rule 13 of CPC in Title Suit No. 696 of



2012 which is pending in the Court concerned.

10. The scope of probate or Letter of Administration is very limited. It does not determine the question of title in property which is subject matter of the Will. There are several decisions on this issue.

This Court in the case of **Vikas Singh & Ors. Vs Devesh Pratap Singh, 2001 (2) PLJR 184** held that the jurisdiction of the probate Court is limited to find out whether the Will is (a) Duly executed (b) genuine and last Will of the testator (c) that such execution is made in a sound state of mind with full understanding. The question of ownership by virtue of amendment in the law lies outside the scope of the proceedings. The Court has also held that any favourable decisions for granting the probate does not operate as res judicata in a suit filed by the objector with respect to title and interest in the property. Similarly in the case of **Ishwardeo Narain Singh Vs Smt. Kamta Devi & Ors. (AIR) 1954 SC 280**, Hon'ble Supreme Court has held that the probate Court has only to decide as to whether the document put forward as the last Will and testament of the deceased person were duly executed and attested in accordance with law and whether the testator was of sound mind while executing the Will. It is not within the



purview of the probate Court to decide the question of title of the suit premises.

11. What the Court in probate proceeding is concerned is whether the testator was in a sound and disposing state of mind, memory and understanding and whether requirements of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act had been complied with. Beyond that, the Court does not concern itself with the title of the property / subject matter of the Will. The jurisdiction of the probate Court is exclusive with respect to issues (a) whether the testator was of sound and disposing state of mind, and (b) whether Will was duly executed and attested and its finding on the aforesaid issues is conclusive in view of Section 41 of the Indian Evidence Act, 1872. The probate is conclusive as to the due execution of the Will and as to the genuineness of the Will and the appointment of executor. So long as grant of probate stands the Will is required to be considered as genuine.

It has been held by Hon'ble Supreme Court in the case of **Krishna Kumar Birla Vs. Rajendra Singh Lodha & Ors.** as reported in **(2008) 4 SCC**, observed that the jurisdiction of the probate case is limited being confined only to consider the genuineness of the Will. A question of title arising under the Act



cannot be gone into the (probate) proceedings. Construction of a Will relating to the right, title and interest of any person is beyond the domain of the probate Court.

12. In a case of probate there is no scope for deciding right, title and interest. Law of succession is self contained code. The Hon'ble Supreme Court in catena of decisions was pleased to hold that a judgment rendered in probate proceedings, though a judgment in rem, would not be determinative of question of title, existence of property, construction of Will relating to right, title and interest of any person, etc. which are beyond the jurisdiction of probate Court.

13. In view of the aforesaid decision of Hon'ble Supreme Court, function of the probate Court is as under :-

- (a) to see the Will executed by testator was actually executed by him / her in a sound state of mind,
- (b) whether the Will was duly attested,
- (c) the genuineness of the Will and
- (d) due execution of the Will

This is the scope of the decision of a probate Court and nothing beyond.

The probate Court :-

- (a) is not competent to determine the question of title to suit properties.
- (b) the probate Court has no power, jurisdiction



and authority to go into the question whether suit properties which are bequeathed by the Will, are ancestral properties or self acquired properties of the testator

(c) The probate Court can not decide any question of a title or existence of the property itself.

14. A probate Court is not competent to go into the question of title. Therefore, a probate proceedings even though it is contentious cannot go beyond its exclusive domain.

15. The learned Court below in its detailed Order dated 24.09.2022 after hearing both the parties and on perusal of record observed that proposed intervenors have in substance denied the title of the Testator in some of the land mentioned in the Will dated 26.10.2019 which is the subject matter of this Probate Case. The learned Court below noted the legal provision that “in Probate Case title cannot be decided. Suffice is to say that in a Testamentary Suit only the genuinity and validity of the Will is decided and title of the testator in a bequeathed property is not a subject matter of adjudication in Testamentary Suit.” Further the learned court below stated that “The proposition laid down by the judgment cited by the intervenors can not be disputed. But these judgments are of no help to them in view of the facts and circumstances of the present case.” Accordingly, the petition for impleadment of petitioner as intervenor has been



rejected.

16. The learned Court below in its judicial discretion, by reasoned order dismissed the petition for impeadment as intrvenor - opposite party in the probate case and there is no valid reason or ground made out to interfere in exercise of this Court's power under Article 227 of the Constitution of India, with the impugned order passed by the learned court below.

17. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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