

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.658 of 2017**

1. Keshav Prasad Alias Khesho Prasad Son of Late Jagdish Prasad,
2. Tetri Devi, wife of Keshav Prasad alias Khesha Prasad, Both resident of Mohalla- Nathuni Ka Bag, P.S.- Dumraon, District- Buxar.

... .. Petitioner/s

Versus

1. Manoj Kumar Verma @ Banarshi Verma Son of Baban Prasad, resident of Mohalla Nathuni Ka Bag, P.S.- Dumraon, District- Buxar.
2. Baban Prasad, Son of Late Jagdish Prasad, resident of Mohalla- Nathuni Ka Bag, P.S.- Dumraon, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 11-01-2024

Heard learned counsel for the petitioners and I intend to dispose of the matter at the stage of admission itself.

2. The petitioners have filed the instant petition against the order dated 8th of February, 2017, passed by learned Additional District & Sessions Judge-V, Buxar in Title Suit No. (Probate Case No. 15 of 2013), by which, learned Additional District & Sessions Judge-V, Buxar has rejected the petition filed on behalf of the petitioners, in which prayer was made for dismissing the probate case as not maintainable.

3. The facts of the case, as it appears from the record, are that respondent 1st party filed Probate Case No. 27 of 2017



in the Court of learned Sub-Judge-1st, Buxar on the basis of will dated 31st of January, 2011, said to have been executed by one Jagdish Prasad in respect of the land detailed in schedule-1 of the probate petition. The said probate case has been pending in the Court of learned Additional District Judge-V, Buxar vide Title Suit No. 15 of 2013 wherein the petitioners filed their written statements submitting therein that the probate case is not maintainable.

4. The further case of the petitioners is that Jagdish Prasad had two sons, namely, Baban Prasad and Keshav Prasad and there had been partition between them. The partition deed was prepared on 18th of April, 1984, in which the land under the will fell in the share of Jagdish Prasad, who gifted the same in favour of petitioner no.2, wife of Keshav Prasad, vide registered deed of gift dated 30th of October, 1987. After receiving the gifted property, petitioner no.2 was coming in possession over the same. Later on, Baban Prasad filed a partition suit bearing No. 64 of 1997 against his father and brother Keshav Prasad in the Court of learned Munshif-1st, Buxar in which Jagdish Prasad appeared and filed his written statement saying that the land in question was in his share on the basis of partition which had already taken place and he had gifted the same in favour of



petitioner no.2, Tetri Devi vide a registered deed of gift and had also handed over the possession. The aforesaid suit was dismissed as withdrawn. Thereafter, Baban Prasad filed a different suit bearing No. 09 of 2010 for setting aside the deed of gift dated 30th of October, 1987, which was also dismissed by learned Munsif, Buxar vide order dated 31st of March, 2011, against which a miscellaneous appeal bearing No. 14 of 2011 was filed, which was also dismissed by learned District Judge, Buxar vide order dated 8th of October, 2012. Thereafter, respondent no.1, Manoj Kumar Verma, filed a Civil Writ No. 1493 of 2013 in this Court, which was dismissed on 5th of January, 2016. Respondent no.1 had also got executed a will on 31st of January, 2011 in respect of land already gifted in favour of petitioner no.2 and on the basis of the same, respondent no.1 filed Probate Case No. 27 of 2012, which is pending in the Court of learned Additional District Judge-V, Buxar under Title Suit No. 15 of 2013. The petitioners filed a petition in the said court on 3rd of February, 2016 stating that the probate case is not maintainable in view of the disposal of the earlier suit and order passed by this Court in C.W.J.C. No. 1493 of 2013. The said application was rejected by learned Additional District Judge-V, Buxar vide order dated 8th of February, 2017. The said order is



under challenge here.

5. Learned counsel for the petitioners submits that the order of learned Subordinate Court is wrong and illegal as the learned Court below did not take into consideration the fact that when the land had already been gifted, the testator had got no further right to will the same property. Learned counsel further submits that the gift deed has been confirmed in favour of petitioner no.2 up to this Court and the same subject matter was also the subject matter of the will, hence, the probate case is not maintainable.

6. Perused the record.

7. I have given my thoughtful consideration to the submissions made on behalf of the petitioners. It is settled law that when a will is put up for probate, the Court considering that will has only to see its genuineness and it cannot decide title and rights over the property mentioned in the will. It cannot go into the fact as to whether the testator has got any right over the property, which is the subject matter of the will. The jurisdiction of the Court, looking into the probate matter, is limited, since it has only to see that whether the will was a genuine document duly executed and attested in accordance with law and whether at the time of such execution, the testator was in his sound mind



and execution was without any force, fraud, coercion or undue pressure. Probate Court does not decide any question of title over the subject matter of property in will or even the existence of such property itself.

8. In the light of discussions made hereinabove, I do not find any infirmity in the impugned order and the same is affirmed.

9. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.01.2024
Transmission Date	N/A

