

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.153 of 2023

Satyendra Kumar son of Krishnadeo Singh, resident of Village- Mananpur,
Golakpur Pariyama, P.O.- Chhotki Akauna, P.S.- Ghoshi, District- Jehanabad.

... .. Petitioner/s

Versus

1. The Estate of Late Brijmani Devi W/o Late Krishnadeo Singh, resident of Village- Mananpur, Golakpur Pariyama, P.O.- Chhotki Akauna, P.S.- Ghoshi, District- Jehanabad, Present Address Ram Krishna Nagar Brindawan Colony, P.O.- Jaganpura, P.S.- Ram Krishna Nagar, District- Patna, Pin Code- 800020.
2. Nagendra Kumar, son of Late Krishnadeo Singh, resident of Village- Mananpur, Golakpur Pariyama, P.O.- Chhotki Akauna, P.S.- Ghoshi, District- Jehanabad, Present Address Ram Krishna Nagar Brindawan Colony, P.O.- Jaganpura, P.S.- Ram Krishna Nagar, District- Patna, Pin Code- 800020.
3. Bhupendra Kumar @ Bhutula son of Late Krishnadeo Singh, resident of Village- Mananpur, Golakpur Pariyama, P.O.- Chhotki Akauna, P.S.- Ghoshi, District- Jehanabad, Present Address Ram Krishna Nagar Brindawan Colony, P.O.- Jaganpura, P.S.- Ram Krishna Nagar, District- Patna, Pin Code- 800020.
4. Sunita Devi, daughter of Late Krishnadeo Singh father and Late Brij Mani Devi mother and wife of Narendra Sharma, resident of Mohalla Naya Tola, Behind Hindustan Medical Hall C/o Manoj Sharma, Post Office and Police Station and District- Jehanabad, Pin Code- 80.
5. Anita Sinha, daughter of Late Krishnadeo Singh father and Late Brij Mani Devi mother and wife of Dilip Kumar, resident of Mohalla- Kumharar, Near Shivam Communication, D.A.V. School, Post Office and Police Station- Agamkuan, District- Patna, Pin Code- 80.
6. Babita Sinha, daughter of Late Krishnadeo Singh father and Late Brij Mani Devi mother and wife of Arvind Kumar, resident of Village- Mahua Bigha, Post Office- Sarata, Police Station- Paras Bigha, District- Jehanabad, Pin Code- 80.
7. Sangita Sinha, daughter of Late Krishnadeo Singh father and Late Brij Mani Devi mother and wife of Manoj Sharma, resident of Mohalla- Naya Tola, Post Office and Police Station and District- Jehanabad, Pin Code-80.
8. Upendra Narayan Singh, son of Krishnadeo Singh, resident of Village- Mananpur, Golakpur Pariyama, P.O.- Chhotki Akauna, P.S.- Ghoshi, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Neeraj Kumar, Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Shivendra Prasad, Advocate Mr. Binod Kumar, Advocate Mr. Jharkhandi Upadhyay, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 13-08-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 21.12.2022 passed by learned Additional District Judge-XXI, Patna in Probate Case No. 138 of 2017 whereby and whereunder the petition filed by the petitioner/intervenors under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter “the Code”) has been rejected.

2. Briefly stated, facts of the case are that respondent 1st set, Nagendra Kumar and Bhupendra Kumar @ Bhutula, filed Probate Case No. 138 of 2017 for probate of registered Will dated 05.10.2009 executed by their mother Brij Mani Devi who died on 25.03.2012. The petitioners filed a petition on 17.08.2019 for being added as party/objector in the probate case claiming that the Will in question was a suspicious document. The petitioners further claimed that they are step-sons of the testatrix Brij Mani Devi and the petitioners and the respondent 1st set are their step-brothers and Krishnadeo Singh was their father. First wife of Krishnadeo Singh was one Janakdulari Devi from whom he had two sons, Satyendra Kumar and Upendra Narayan Singh and Satyendra Kumar is the petitioner in the present case. Janakdulari Devi died during minority of the

petitioner and Krishnadeo Singh solemnized his 2nd marriage with Brij Mani Devi who gave birth to four daughters and two sons. The daughters have been made respondent 2nd set and intervenor Upendra Narayan Singh, the respondent 3rd set. The petitioner further claimed that the property of Krishnadeo Singh was mutated to the extent of $\frac{1}{4}$ share to the intervenors and the respondent 1st set. As the father of the petitioner turned hostile to the interest of the intervenors, these intervenors were forced to bring a partition suit *vide* Title Partition Suit No. 38 of 2012 for partition of entire joint family property including the property under the Will. During pendency of the suit Krishnadeo Singh died in year 2015. Thus, the petitioner/intervenors claimed their interest in the properties under the Will in question and further claimed themselves to be necessary parties and prayed for their impleadment. The respondent 1st set filed their rejoinder to the petition dated 17.08.2019 on 10.12.2019 challenging the maintainability of the petition. The learned probate court, having considered the petition and its rejoinder, rejected the intervenors petition *vide* the impugned order dated 21.12.2022.

3. Learned counsel for the petitioner submitted that the impugned order is bad in the eye of law as well as facts. The learned Probate Court failed to appreciate the meaning of

necessary party in a probate proceeding and further failed to appreciate that petitioner has a right to claim relief in respect of Will in question. The learned trial court further failed to appreciate that the intervenors have already filed the partition suit for partition of joint family properties including the property mentioned in the Will in question. Learned counsel further submitted that the learned Probate Court further failed to consider the status of the intervenors being the direct lineal descendants of Krishnadeo Singh along with the respondent 1st set and thus they are one of the near relatives within the meaning of Section 235 of Indian Succession Act which provides for invitation of objections from next of kin. The learned Probate Court further failed to take into consideration the provisions of Section 283(1) (C) and Section 284 of the Indian Succession Act for considering that the intervenors were the persons claiming to have interest in the estate of deceased and howsoever this interest might be small, even a bare possibility of interest is sufficient to entitle a person to enter appearance in probate proceeding. The learned counsel referred to the decision of learned Single Judge of this Court in the case of *Narayan Sah Vs. Devaki* reported in *AIR 1978 PATNA 220* wherein it has been held if the petitioner is having interest to

safeguard, the same gives sufficient right to that person to enter caveat in the probate proceeding. In this regard, learned counsel also referred to a decision of Hon'ble Supreme Court of India reported in **2019(2) CCC 103 (SC)**. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside and the petition dated 17.08.2019 filed by the intervenors may be allowed.

4. The learned counsel appearing on behalf of the respondent 1st set vehemently contended that there is no infirmity in the impugned order and the same does not require any interference. The learned counsel further submitted that nobody can seek intervention in the probate case as a matter of right. Further, the claim of the petitioner/intervenors is based on their right and claim over the properties of their late father which also form part of the property in Will. But in a testamentary suit only genuineness and validity of the Will has to be decided and right title and interest of the parties cannot be tested in a testamentary suit. Admittedly, the intervenors have already filed a title partition suit. The learned counsel referred to a decision of this Court dated 02.05.2024 passed in ***Civil Miscellaneous Jurisdiction No. 710 of 2023*** wherein this Court rejected the petition of the intervenors and set aside the order of

their impleadment passed in a probate case on the ground that the intervenors were not having any inheritable rights. The learned counsel further referred to the decision of a Co-ordinate Bench dated **18.04.2023** passed in ***Civil Miscellaneous Jurisdiction No. 685 of 2022*** on the proposition that a Probate Court is not competent to go into the question of title and in testamentary suit only the genuineness and validity of the Will is to be decided. The learned counsel for the respondent further submitted that the petitioner/intervenors have no inheritable interest in case of failure of the probate proceeding. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same has been passed after due consideration of the facts and law.

5. I have given my thoughtful consideration to the rival submission of the parties in the light of the facts and circumstances of the parties. The Hon'ble Supreme Court, in the case of ***Krishna Kumar Birla vs Rajendra Singh Lodha & Ors.*** reported in ***(2008) 4 SCC 300***, discussing the maintainability of caveat under Section 283, Section 284 and Section 295 of Indian Succession Act, 1925 held that a person, who would have succeeded to the testator's estate in case of interstate succession, would ordinarily have a caveatable interest, but any other person

must ordinarily show a special interest in the testators estate. The Hon'ble Supreme Court further held that the interest claimed as caveatable interest must not be one which would have the effect of destroying the testator's estate and any person claiming any interest adverse to the testator or his estate cannot maintain any application before the Probate Court and his remedy would lie elsewhere. The Hon'ble Supreme Court clarified that the caveatable interest is not synonymous with contention. The Hon'ble Supreme Court further held that a reversioner or an agnate or a family member can maintain a caveat only when there is a possibility of his inheritance of the estate, in case probate is not granted. If there are heirs intestate who are alive, entertaining of a caveat on the part of another family member or a reversioner or an agnate or cognate would never arise.

Applying these principles, the Hon'ble Supreme Court held that directly or indirectly, the appellant had questioned the title or disposing power of the testatrix and hence disqualified themselves as caveators. The Hon'ble Supreme Court further held that existence of a mutual Will or filing of a suit, by themselves, are not sufficient to create a caveatable interest.

The Hon'ble Supreme Court reiterated the law about nature and scope of decision of the Probate Court holding that jurisdiction of the Probate Court is confined only to consider genuineness of the Will and it is not within the purview of the Probate Court to decide the question of title or construction of Will relating to right, title or interest of any person. A judgment rendered in a probate proceeding, though a judgment *in rem* could not be determinative of questions of title, existence of the property, construction of Will relating to right, title or interest of a person and all these matters are beyond the jurisdiction of the Probate Court. The remedy of a person in respect of latter type of question is to file a separate suit or to file application under Section 263 of the Succession Act for revocation of probate. For revocation of probate, absence of caveatable interest does not affect the standing of such person to bring application for revocation of probate.

6. In the instant case, the testatrix died during lifetime of her husband Krishnadeo Singh. In case probate is not granted to the respondent 1st set, the property of Brij Mani Devi would devolve upon her sons and daughters and her husband. If the property devolves upon the husband, naturally the intervenors could claim right in such property of their father who is since

deceased. Thus, there appears a possibility of intervenors of their inheritance in the estate, in case probate is not granted being lineal descendants of Krishnadeo Singh. Thus, the petitioner/intervenors could be said to be persons with caveatable interest. Furthermore, the intervenors did not challenge the rights of the testatrix to execute the Will though they challenge the genuineness of Will. So there is no challenge to the title of the testatrix, a situation in which the intervenors could be denied impleadment if they so challenge the title of the testatrix. In ***Kashi Nath Singh Vs. Gulzari Kuer*** reported in ***AIR 1941 Pat 475***. It has been held that a person, who claims outside and independently of a Will or claims adversely to the testator and disputes his right to deal with the property, can in no sense be deemed to claim an interest in the estate of the deceased within the meaning of Section 283. But the said proposition that a person who claims adversely to the testator and disputes latter's right to deal with the property, has no right or *locus standi* to enter caveat and such person would not be deemed to claim an interest in the estate of the deceased in a letters of administration case, has no application to the present case. Based on the aforesaid reasoning, I have no hesitation in holding that the learned Probate Court erred on this point when

it refused to entertain the intervenors petition of the petitioner.
Based on the same reasoning, it is apparent that the authorities cited by the learned counsel for the respondents are of no help to his cause as the facts are quite dissimilar.

7. Therefore, the impugned order dated 21.12.2022 is set aside and the intervenors petition dated 17.08.2019 is allowed.

8. Accordingly, the instant civil miscellaneous petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	11.07.2024
Uploading Date	20.08.2024
Transmission Date	N/A