

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.383 of 2017**

Makhan Prasad Singh Son of Late Shiv Chandra Singh, Resident of Village-
Sahjadpur Ander Kila P.S. Hajipur P.O. Hajipur District Vaishali.

... .. Petitioner/s

Versus

1. Mishrilal Singh Resident of village Sahjadpur Anderkila P.S. Hajipur, P.O. Hajipur, P.O. Hajipur District Vaishali.
2. Jawahar Singh null Both Resident of Village-Sahjadpur Anderkila P.S. Hajipur, P.O. Hajipur, P.O. Hajipur Distict Vaishali.
- 3.1. Basudeo Singh, Son of Late Jammun Singh, Resident of village Haribanshpur P.O. Warispur P.S. Bhagwanpur District Vaishali.
- 3.2. Nageshwar Singh, Son of Late Jammun Singh, Resident of village Haribanshpur P.O. Warispur P.S. Bhagwanpur District Vaishali.
- 3.3. Tulsi Singh, Son of Late Jammun Singh, Resident of village Haribanshpur P.O. Warispur P.S. Bhagwanpur District Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ratan Kumar Sinha, Advocate Mr. Majojeshwar Pd. Sinha, Advocate Mr. Sanjay Kumar Sinha, Advocate Ms. Rama Prabha, Advocate Ms. Madhulika Pandey, Advocate
For the Respondent/s	:	Mr. Madanjeet Kumar, Advocate

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

Date : 11-06-2024

The instant civil misc. petition has been filed under Article 227 of the Constitution of India for quashing the order dated 03.12.2016 passed by the learned 2nd Additional District Judge, Vaishali at Hajipur in Letter of Administration (LOA) Case No. 14 of 2001, whereby and whereunder the learned trial court allowed the petition dated 03.07.2015 filed on behalf of Intervenors/opposite parties/respondents filed under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 (hereinafter



referred to as 'the Code').

02. Briefly stated the facts of the case are that one Ramrati Devi filed Title Suit No. 239 of 1989 before the learned Sub Judge, Vaishali for declaration of right and interest over the suit land and also for declaring certain deed of gift as illegal, inoperative and not binding upon the plaintiff. During pendency of the original suit, the plaintiff, Ramrati Devi, died and in her place, the name of present petitioner was substituted. The title suit was decreed on contest in favour of the plaintiff/petitioner by judgment dated 22.11.2013. During pendency of the title suit, the petitioner filed one LOA Case No. 14 of 2001 before the learned Additional District Judge, Vaishali at Hajipur. In LOA case, one Basudeo Singh, who is the son of Intervenor-Jamun Singh, filed a petition on 03.12.2003 for his impleadment as party in LOA Case No. 14 of 2001. However, the learned trial court rejected the petition vide order dated 08.10.2010, finding no merit in it. Against the said order, the intervenor-Basudeo Singh moved before this Court by filing CWJC No. 7321 of 2010, which was dismissed on 28.09.2011. Undeterred by the dismissal of the petition filed by his son, the original respondent no. 3, Jamun Singh filed another petition under Order 1 Rule 10(2) of the Code on 27.03.2015, praying for his impleadment



as an opposite party. The petitioner filed a rejoinder and after hearing the parties, the learned trial court vide order dated 03.12.2016 allowed the petition dated 23.07.2015, which is under challenge before this Court.

03. Learned counsel for the petitioner submitted that the learned trial court passed the order impugned without consideration of the objection made by the petitioner. Learned trial court did not consider that in earlier round of litigation, the son of the present intervenor was denied impleadment in the present case and it was upheld by this Court as well. Learned counsel for the petitioner further submitted that the respondent no. 3 has died and has been substituted by his legal heirs/representatives as respondent nos. 3(i), 3(ii) and 3(iii). The basis of claim of original respondent no. 3 was the gift deed dated 23.01.1989 executed by one Firangi Bhagat. The original respondent no. 3 was convicted on 15.09.1997 for forging the signature of Firangi Bhagat on the deed of gift in a criminal case and earlier they were convicted for murder of Firangi Bhagat and taking into consideration this fact, the learned Single Judge of this Court dismissed the petition filed by substituted respondent no. 3(i). Learned counsel further submitted that substituted respondent no. 3, Basudeo Singh and others illegally



brought into existence the fraudulent deed of gift and thereafter in collusion with some other persons, they killed Firangi Bhagat and all these persons were convicted and sentenced to life imprisonment. Moreover, the said deed of gift has been set aside in Title Suit No. 239 of 1989. So, there remains no basis for the respondents to get themselves impleaded in the LOA case filed by the petitioner. Learned counsel further submitted that a petition under Order 1 Rule 10(2) of the Code cannot be entertained in a proceeding for grant of probate or letter of administration. Learned counsel further submitted that the petitioner has no caveatable interest in the present case and hence, the learned trial court completely erred on the point when it ordered for impleadment of the respondents in the LOA case before it. Learned counsel further submitted that the intervenors/respondents have rather taken a plea that Ramrati Devi had got no right, title and interest over the property of Firangi Bhagat as her status was that of his concubine and not of wife. In fact, the intervenors challenged the title of the testator of the Will and their interests are adversarial to the testator. In support of his submission, learned counsel relied on the decision of learned Single Judge of this Court in the case ***Dinesh Kumar Singh Vs. Brij Bhushan Singh and Ors.***, reported in 2023(3)



PLJR, 233. For the aforesaid reasons, it has been submitted that the impugned order is not sustainable and the same be set aside.

04. On the other hand, learned counsel appearing on behalf of respondents vehemently opposed the submission made on behalf of the petitioner. Learned counsel submitted that the petitioner has wrongly claimed that after death of Ramrati Devi, the petitioner was substituted in her place in the suit as plaintiff as the name of the petitioner was added in the case to represent the estate of the deceased plaintiff. Further, against the judgment and decree passed in Title Suit No. 239 of 1989, the answering respondents and other persons have filed Title Appeal No. 03 of 2014, which is pending before the Court learned Additional District Judge, Vaishali. Learned counsel further submitted that the respondents were convicted in Sessions Trial No. 287 of 1990 arising out of Bhagwanpur P.S. Case No. 43 of 1989 and against the order of conviction, they filed Criminal Appeal (DB) No. 202 of 1996 and a Division Bench of this Court set aside the order of conviction of the learned Sessions Court and acquitted the respondents. Learned counsel further submitted that the original respondent no. 3, namely Jamun Singh, filed Partition Suit No. 298 of 2015 in which the present petitioner has also been made party for the reason that the Probate case filed by the



petitioner has been pending. Learned counsel further submitted that it is the case of the respondents that one Kismatiya Devi was the legally wedded wife of Firangi Bhagat and Ramrati Devi was not his legally wedded wife, who was his concubine. Learned counsel further submitted that the petitioner is not related with Firangi Bhagat and original substituted respondents are the only living persons in the family of Firangi Bhagat as the petitioner has no relation with said Firangi Bhagat. The petitioner has wrongly impleaded Mishri Lal Singh and Jawahar Singh as party in the present case as they are not related with original respondent no. 3, Jamun Singh. The petitioner has deliberately made them party claiming them to be brothers of Jamun Singh. Learned counsel further submitted that the land in question belonged to Firangi Bhagat and it is in possession of the answering respondents and for this reason they are interested parties in the Estate of deceased. Partition Suit No. 298 of 2015 has been filed between the parties and the genealogical table, which is part of the partition suit, shows the respondents come within the family of Firangi Bhagat and they are interested parties in the Estate of the deceased. Learned counsel further submitted that the petitioner has forged the Will of a lady who was not legally wedded wife of Firangi Bhagat and on that



basis, the petitioner has been making his claim on the Estate of Firangi Bhagat. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained.

05. I have given my conscious consideration to the rival submission of the parties as well as the material available on record. The parties are at loggerheads over the property of one Firangi Bhagat. The intervenors challenged the claim of Ramrati Devi as wife of Firangi Bhagat. The case of the intervenors is that Firangi Bhagat had a wife Kismatiya Devi and she died issue-less and Ramrati was taken as concubine. Firangi Bhagat also died issue-less. On the other hand, the petitioner has stressed the fact that Ramrati Devi was the second wife of Firangi Bhagat and after his death, she came into title and possession of the property of Firangi Bhagat. The claim of the petitioner is as executor of her Will. No doubt, a judgment in a probate of letter of administration is a judgment *in rem*. However, a judgment rendered in a probate proceeding would not be determinative of question of title. But general citation issued in terms of Section 283(1)(c) of the Indian Succession Act calling upon all such persons who claimed to have any interest in the estate of the deceased is for those persons who



have an interest in the estate left by the deceased. Only because neither under Section 284 nor under Section 295 of the Indian Succession Act is the caveator required to show any interest in the estate of the deceased, the same would not mean that anybody and everybody who intends to oppose the grant of probate would be entitled to lodge caveat. Citations are issued in order to enable such persons to see the proceedings before the grant of probate and if necessary, to oppose the same. Furthermore, the interest claimed as caveatable interest must not be one which would have the effect of destroying the testator's estate. 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. This view has been taken by the Hon'ble Supreme Court in the case of ***Krishna Kumar Birla Vs. Rajendra Singh Lodha & Ors***, reported in ***(2008) 4 SCC 300***.

06. Furthermore, the scope of proceeding in a LOA case or probate case is very limited. In the case of ***Ishwardeo Narain Singh Vs. Smt. Kamta Devi & Ors.***, reported in ***AIR 1954 SC 280***, the Hon'ble Supreme held that Probate Court has only to decide as to whether the document put-forward is last Will and testament of the deceased person and was duly



executed and attested in accordance with the law and whether the testator was of sound mind. Therefore, any question of title cannot be gone into in a probate proceeding and construction of Will relating to right, title and interest of any person is beyond the domain of probate court, and hence the Probate Court is not competent to determine the question of title or nature of ownership of the property of the testator or even the existence of property itself.

07. Coming back to the facts of the present case, the intervenors contest the testator's title and when the intervenors are questioning the existence of title in respect of her estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein. Again, the observation of Hon'ble Supreme Court in the case of ***Krishna Kumar Birla*** (supra) can be referred on this point. The Hon'ble Supreme Court also held that a person having a remote family connection or as an agnate is entitled to file a caveat. No doubt, a reversioner or an agnate or a family member can maintain a caveat only when there is a possibility of his inheritance of the property in the event the probate of a will 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. Now, the interevenors/respondents though claimed themselves to be agnates of Firangi Bhagat and in case of Will of Ramrati Devi being proven forged, they might have a chance to succeed to the property of Firangi Bhagat but even then, they could not seek impleadment as a matter of right since they question the title of the testator and for this reason would be a stranger to the proceeding. Remedy for a person questioning title, existence of property, construction of Will relating to right, title and interest of any persons lies in filing a separate suit or an application under Section 263 for revocation of probate/letter of administration.

08. Hence, in the light of discussion made here-in-above, I am of the considered opinion that the learned trial court committed an error of jurisdiction when it allowed the impleadment of the original respondent no. 3 vide order dated 03.12.2016. Accordingly, the order dated 03.12.2016 passed by the learned 2nd Additional District Judge, Vaishali at Hajipur in Letter of Administration (LOA) Case No. 14 of 2001 is set aside.

09. Accordingly, the present Civil Misc. Petition is



allowed.

10. This Court has not expressed any opinion on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	06.05.2024
Uploading Date	11.06.2024
Transmission Date	NA

