

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.710 of 2023**

1. Smt. Geeta Sharma, Wife of Sri Krishna Prasad Sharma, Resident of Village-Tiskhora, P.S.Naubatpur, P.O.-Arap, District-Patna.
2. Smt. Reeta Devi @ Reeta Singh, Wife of Sri Prem Kumar Singh, Resident of Mohalla-Purandarpur, P.S.-Jakkanpur, P.O.-G.P.O., District-Patna.
3. Smt. Sita Singh, Wife of Sri Nand Kishore Singh, Resident of Seikhpura, Beldari Tola, P.S.-Shastri Nagar, P.O.-Veterinary College, District-Patna.

... .. Petitioner/s

Versus

1. Estate of Late Mosmat Laxmin Kuar, W/o of Late Awadh Bihari Singh, Resident of Vilage-Akhtiyarpur, P.S. and P.O.-Bikram, District-Patna at that time residing at Mohammadpur, P.S.-Phulwari, P.O.-Mubarakpur, District-Patna.
2. Most. Chameli, Wife of Late Binay Kumar, Resident of Village-Mohammadpur, P.S.-Phulwari, District-Patna.
3. Sambhu Sharan Madhukar, Son of Late Suresh Singh, Resident of Village-Mohammadpur, P.S.-Phulwari, District-Patna.
4. Anand Mohan, Son of Late Vijay Sharma, Resident of Village-Mohammadpur, P.S.-Phulwari, District-Patna.
5. Arun Mohan, Son of Late Vijay Sharma, Resident of Village-Mohammadpur, P.S.-Phulwari, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Deepak Kumar Sinha, Advocate
For the Respondent/s : None

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

Date : 02-05-2024

Heard learned counsel for the petitioners on the point of admission and I intend to dispose of the present petition at the stage of admission itself. However, despite opportunity, no one appeared on behalf of the respondents.

02. The instant petition has been filed by the petitioners under Article 227 of the Constitution of India for setting aside the order dated 01.06.2023 passed by the learned



Additional District Judge-1st, Civil Court, Danapur in Probate Case No. 111 of 2015 whereby and whereunder the learned trial court has allowed the petition filed by the intervenors/respondents under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') and added the intervenors-respondents as a party objector.

03. Brief facts of the case are that the petitioners have instituted Probate Case no. 111 of 2015 under Section 276 of the Indian Succession Act for grant of probate of Will dated 15.02.1998 executed by one Most. Laxmi Kuar in favour of Smt. Urmila Devi, applicant no.1-Geeta Sharma, applicant no.2-Smt. Reeta Devi, applicant no.3-Smt. Seeta Singh and Sri Ram Janki Sthan, Katra, Rajghat, Ayodhya (U.P.) through its Mahant. During pendency of the probate case, after lapse of about 8 years, the intervenors/respondents filed an application on 22.03.2023 under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure praying therein that they be permitted to intervene in the probate case as they are co-sharers in the property in question under the probate case. In the said petition, it has been stated that the common ancestor of petitioners and respondents was one Kewaldhari Singh and he had two sons, namely, Yamuna Singh, Mathura Singh and one daughter,



namely, Laxmi Kuer who died issue-less. The petitioners are the legal heirs of Yamuna Singh whereas the intervenors-respondents are the heirs of Mathura Singh. It has further been stated that since death of Laxmi Kuer, her properties are being used by the petitioners. The respondents further claimed that the petitioners knowingly did not make them party in the probate case in order to grab all the properties in question under probate on the basis of forged Will stated to be executed by Laxmi Kuer bequeathing her entire properties in favour of the heirs of Yamuna Singh, who are petitioners before this Court as well as one Ram Janki Asthan, Ayodhya through its Mahant.

04. Learned counsel for the petitioners submits that the impugned order passed by the learned trial court is illegal, bad and without application of mind. Learned trial court has not considered the fact that petition under Order 1 Rule 10 of the Code is not maintainable in the probate case filed by the petitioners under Indian Succession Act which is a self sufficient Code. The learned trial court has not appreciated the fact that the probate case is almost in the final stage and at this stage allowing the intervention petition for adding the respondents as parties who are having no *locus standi*, is not sustainable in the eyes of law. Learned counsel further submits that the learned trial court committed error in passing the impugned order holding that the



intervenors-respondents might have been entitled to some inheritance if there were no Will in existence. But in the present case, there is a registered Will for which the probate case has been filed. The learned trial court has failed to take note of the fact that the basis of the present probate case is the registered Will executed by the said Late Laxmi Kuer for her self acquired properties and it is the duty of the learned trial court to first examine the will. The learned trial court did not appreciate the fact that the intervenors-respondents have no inheritable interest as they utterly failed to establish this fact. The intervenors-respondents claim themselves as shareholder in the property of the testator Most. Laxmi Kuer. But their share could not be decided in the probate proceeding. If the intervenors-respondents challenge the right of the testator to execute the will, they have a remedy by way of filing a title suit. Learned counsel further submits that Most. Laxmi Kuar had full right to execute any will in her lifetime for her own property as per her wishes, therefore, the probate case has been filed for grant of probate of the will executed by Laxmi Kuar in which the intervenors/respondents, who are like strangers in the probate case, has no right but the learned trial court without considering this fact allowed them to be impleaded as party which is completely illegal. In support of his submission, learned counsel relied on a decision of this Court



in the case of ***Dinesh Kumar Singh Vs. Brij Bhushan Singh***, reported in ***2023(3) PLJR 233*** on the proposition that the probate court has not competence to determine the title of the suit properties or whether such properties are ancestral or self acquired. Learned counsel further relied on the decision of Hon'ble Supreme Court in the case of ***Krishna Kumar Birla Vs. Rajendra Singh Lodha & Ors.***, reported in ***(2008) 4 SCC 300*** with regard to same proposition. Learned counsel also relied on the decision of this Court in the case of ***Vikas Singh & Ors. Vs. Devesh Pratap Singh***, reported in ***2001 (2) PLJR 184*** to stress that the jurisdiction of the court is limited to finding out due execution of Will, whether the Will is genuine and last will of the testator and such execution was made in sound state of mind with full understanding. Thus, the learned counsel submits that the impugned order is not sustainable and liable to be set aside. Even if the claim of the intervenors is genuine, the same cannot be decided in this Probate Case. Learned counsel further submits that there is no scope for deciding any dispute with regard to title in probate proceeding.

05. I have gone through the material available on record and submission made on behalf of the petitioners. The learned trial court vide impugned order has allowed the intervenors-respondents to be impleaded as a party in the Probate



Case filed on behalf of the petitioners.

06. The scope of probate proceeding is very limited. It does not determine the question of title in property which might be the subject matter of the Will. In a probate case only genuineness of the Will and due attestation of the Will is to be considered. Even if the claim of the petitioners with regard to title may be genuine, the same cannot be decided in the Probate Case.

07. The Hon'ble Supreme Court in the case of ***Ishwardeo Narain Singh Vs Smt. Kamta Devi & Ors***, reported in ***AIR 1954 SC 280***, 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.

08. The issue before this Court is whether the intervenors/respondents could be allowed to be impleaded as party in a probate case on the ground that the intervenors claim their right as co-sharer with the testator in the suit properties on the basis of agnatic relationship with the testator-Laxmi Kuer.

09. In the case of ***Krishna Kumar Birla*** (supra), the



Hon'ble Supreme Court have discussed the maintainability of caveat under Sections 284, 283 and 295 of Indian Succession Act, 1925 and discussed who are the persons with caveatable interest and held that reversioner or agnate or family members 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 reversioner or agnate or cognate would never arise.

10. The petition of intervenors/respondent and their prayer for impleadment in probate case before the learned Additional District Judge would fail on two counts. The intervenors have based their claim on the ground that they have equal share in the property of Laxmi Kuer as they are agnates. Further, these intervenors/respondents have claimed that they have been coming in possession of their share of land after death of Laxmi Kuer and has been cultivating the same for their benefit. Thus, their claim is with regard to their right, title and interest in the property of the Will. However, the Hon'ble Supreme Court in the case of **Krishna Kumar Birla** (supra) and **Ishwardeo Narain Singh** (supra) has held 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 and interest of any person. It has been further held by the Hon'ble Supreme Court that a judgment rendered in probate proceedings, though a judgment *in rem*, would not be determinative of questions of title, existence of the property, construction of will relating to right, title and interest of a person and all these matters are beyond the jurisdiction of the probate court.

11. Apparently, the intervenors/respondents did not file any caveat and came up at the final stage of the proceedings after eight years. So far as inheritance is concerned, after coming into force of Hindu Succession Act, 1956, with regard to property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the father. On the other hand, any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the husband.

12. In the instant case, petitioners claimed that the property of the testator was her herself acquired property. If the intervenors claimed otherwise and line of succession is not clear, the intervenors could not have any inheritable rights. If the heirs of the deceased husband are available, even in that case,



intervenorors have no right. For this reason, the reasoning of the learned trial court does not appear to be correct as the intervenorors-responderents have failed to show any clear inheritable interest. Rather their claim appears to be based on title.

13. From the discussion made here-in-above on the aforesaid two points, I find and hold that the impugned order dated 01.06.2023 passed by the learned Additional District Judge-1st, Civil Court, Danapur in Probate Case No. 111 of 2015 is not sustainable and it is set aside. In the result, the petition filed by the intervenorors/responderents under Order 1 Rule 10(2) of CPC is rejected.

14. Accordingly, the present civil misc. petition stands allowed.

15. However, 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)

Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11-05-2024
Transmission Date	NA

