

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.71 of 2024

Devesh Pratap Singh Son of Late Visheshwar Pratap Narayan Singh, Resident of Village- Majhauriya, Police Station- Bathnaha, District- Sitamarhi, presently residing at 402/19 Vipul Green Sector 48, Sohana Road, Gurugram, Harayana.

... .. Petitioner

Versus

1. The Estate of Late Visheshwar Pratap Naryan Singh Resident of Village- Majhauriya, Police Station- Bathnaha, District- Sitamarhi.
2. Vikash Singh, Son of Late Suresh Pratap Singh, Resident of Village- Majhauriya, Police Station- Bathnaha, District- Sitamarhi.
3. Vivek Singh, Son of Late Pratap Singh, Resident of Village- Majhauriya, Police Station- Bathnaha, District- Sitamarhi.
4. Shashi Prabha Singh, Wife of Late Suresh Pratap Singh, AT and P.O.- 172, Pushpanjali Vikash, Extension, New Delhi-110098.
5. Vandanan Rai, Daughter of Late Suresh Pratap Singh, Wife of Sri Sanjay Singh, AT and P.O.- 172, Pushpanjali Vikash, Extension, New Delhi-110098.
6. Anjali Rai, D/o Late Suresh Pratap Singh, W/o Dr. Hemanshu Shekhar Rai, At and P.O. I.G.I.M.S. Sheikhpura, Patna.
7. Sadhna Singh, D/o Late Suresh Pratap Singh, W/o Birendra Pd. Singh, Resident of Balaji Nursing Home Boring Road, Patna.
8. Jiveshwar Singh, Son of Late Dr. L.P. Singh, Resident of 305, anugrahपुरी Colony, P.O.- Gaya, P.S.- Anugrahपुरी Gaya.
9. Rudreshwar Singh, Son of Late Dr. L.P. Singh, Resident of 305, anugrahपुरी Colony, P.O.- Gaya, P.S.- Anugrahपुरी Gaya.
10. Lakshmeshwar Pd Singh, Son of Late Dr. L.P. Singh, Resident of 305, anugrahपुरी Colony, P.O.- Gaya, P.S.- Anugrahपुरी Gaya.
11. Sameshwar Singh, Son of Late Dr. L.P. Singh, Resident of 305, anugrahपुरी Colony, P.O.- Gaya, P.S.- Anugrahपुरी Gaya.
12. RajeShree Singh, D/o Late Abha Singh and L.P Singh, W/o Kabindra Pd. Singh, At and P.O. Jaigobind Bhawan, New Dak Bungla Road, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate
For the Respondent/s	:	Mr. J. S. Arora, Sr. advocate
		Mr. Navin Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 28-06-2024

The present petition has been filed by the petitioner



under Article 227 of the Constitution of India for setting aside the order dated 07th of November, 2023 passed by the learned 3rd Additional District Judge, Sitamarhi in Letters of Administration Case (hereinafter referred to as 'LA Case) No. 09 of 1998, whereby and whereunder the petition dated 19.09.2023 filed by the petitioner for recalling the order dated 22nd of August, 2023 has been rejected.

02. The conspectus of the case of the parties is that respondent nos. 2 and 3 filed Probate Case No. 09 of 1998 under Section 276 of the Indian Succession Act and vide order dated 05th of June, 2013, it was amended as LA Case No. 09 of 1998, for grant of letters of administration of the Will dated 06.12.1976 executed by testator-Visheshwar Pratap Narayan Singh. The petitioner has been impleaded as opposite party no. 1-B (hereinafter referred to as 'the petitioner'). Vide order dated 30.10.2007 passed by the learned trial court, Probate Case No. 09 of 1998 was dismissed for non-compliance of order dated 15.06.2005 as requisites for service of notice were not filed. Thereafter, Misc. Case No. 03 of 2008 was filed on 18.09.2008, which was subsequently allowed vide order dated 09.08.2011 passed by the learned trial court. It further appears that thereafter LA Case No. 09 of 1998 (previously Probate Case No.



09 of 1998) was again dismissed vide order dated 07.04.2018 due to non-filing of probate duty. After that Misc. Case No. 02 of 2018 was filed again for restoration of LA Case No. 09 of 1998, which came to be allowed vide order dated 26.02.2021. The petitioner appeared in LA Case No. 09 of 1998 on 11.09.2023 and filed a petition on 19.09.2023 for recall of order dated 22.08.2023 passed by the learned trial court by which the said case has been posted for *ex parte* hearing against the petitioner. Thereafter, a rejoinder dated 27.09.2023 has been filed on behalf of respondent nos. 1 and 2 against the petition dated 19.09.2023 filed by the petitioner, contesting the claim of the petitioner. After hearing the parties, the learned 3rd Additional District Judge, Sitamarhi did not allow the petition dated 19.09.2023 filed for recalling the order dated 22.08.2023 by passing the impugned order dated 07.11.2023. At the same time, the learned trial court, though debarred the petitioner from filing the caveat, permitted him to participate in the proceeding and cross-examine the applicants' witnesses.

03. Learned counsel, Mr. Radhamohan Pandey, appearing on behalf of the petitioner submitted that the learned trial court has passed the impugned order on erroneous assumption that petitioner was aware about the proceeding for



grant of letters of administration as the learned trial court overlooked the fact that petitioner is a 90 years old person, who resides with one of his daughters at her house in Gurugram, Haryana and no notice of instant case was served upon him on 17.02.2023 as observed by the learned trial court. Learned counsel further submitted that the learned trial court overlooked the fact that by the Will in question, petitioner and his brother Suresh Pratap Singh have been appointed trustees and presently only the petitioner-Devesh Pratap Singh is alive. He is the sole trustee and till the petitioner is alive, no cause of action would arise in favour of so called legatees of the Will under reference. Learned counsel further submitted that none of the witnesses of the said Will are alive and for this reason genuineness and legality of the Will could not be tested according to the mandate of Section 68 of the Indian Evidence Act, which provides that in case of Will, at least one witness must be examined. Learned counsel further submitted that the petitioner and his daughter Mukti Bharadwaj have jointly instituted Partition Suit Nos. 385 of 2022 and 386 of 2022, respectively, in which respondent nos. 1 and 2 are defendant nos. 1 and 1 and 2 and the plaintiffs have sought $\frac{1}{2}$ share and $\frac{1}{4}$ share of the suits' properties, respectively. Learned counsel further submitted that respondent nos. 1 and 2,



in their rejoinder dated 27.09.2023, have opposed the petition dated 19.09.2023 on the ground that the petitioner has received the notice on 17.02.2023, but this claim had been denied by the petitioner. The respondents have also taken a plea that in the pending Partition Suit No. 386 of 2022, these respondents as defendants filed written statement and stated about pendency of probate case but the fact is that they have not filed any written statement and as such the petitioner was not aware about pendency of present LA case. However, the respondents filed a petition on 27.01.2023 making averment about the Will allegedly executed by their grandfather and also about the fact that they have filed LA Case No. 09 of 1998 but in the said petition dated 27.01.2023, they have not referred the name of the learned trial court where their LA case was pending. Learned counsel further submitted that learned trial court has further committed illegality when it did not consider the fact that twice the Probate case/LA case of the respondents was dismissed and as the petitioner has not been staying at his permanent residence, he has no occasion of knowing about the pendency of the LA case. Learned counsel further submitted that the impugned order is based on wrong appreciation of facts and the learned trial court has wrongly inferred that the petitioner



was having knowledge of the pendency of the LA case, still he did not appear despite service of notice. The learned trial court did not take into account the fact that probate duty was deposited after 20 years of filing of LA case. Prior to that for three years nine months, LA case remained dismissed. So, it was not due to any fault on part of the petitioner that the LA case has been pending for more than two decades. The learned trial court further committed an error on record when it made an observation that it was not believable that the petitioner got knowledge of the probate case in the month of September, 2023 after lapse of more than two decades. The petitioner made his appearance in probate/letters of administration case prior to its first dismissal and this fact is evident from order dated 11.08.2003. Since the probate case came to be dismissed twice, it was not possible for the petitioner to keep track of the matter and this fact skipped notice of the learned trial court. The learned counsel, thus, submitted that in the light of aforesaid facts and circumstances, the impugned order dated 07.11.2023 is not sustainable and the same be set aside and the petitioner be allowed to file his objection and written statement in LA Case No. 09 of 1998.

04. Countering the submission of the learned counsel



for the petitioner, learned senior counsel, Mr. J. S. Arora, appearing on behalf of the respondent nos. 2 and 3 submitted that the petition filed by the petitioner is gross abuse of the process of the Court and has been filed only to delay the proceeding before the learned trial court in LA Case No. 09 of 1998. The petitioner has not even approached this Court with clean hands and has made false statement. A partition in the family of the petitioner and respondent nos. 2 and 3 took place in the year 1954 which was reduced in writing on 17.10.1955. The petitioner disposed of all his property which came in his share through the partition effected in 1954. The grandfather of respondent nos. 2 and 3 and the father of petitioner bequeathed all his movable and immovable properties to respondent nos. 2 and 3 vide Will dated 06.12.1976, which was duly registered. He died in the year 1987 and thereafter, respondent nos. 2 and 3 started looking after the property left behind by their grandfather and they have been in exclusive possession and enjoyment of the properties left behind by their grandfather without any hindrance from any quarter including the petitioner who is well aware about bequeath of the property in favour of respondent nos. 2 and 3. He was even aware about the Will executed by his mother in favour of respondent nos. 2 and 3 in



respect of her property at Patna. Mr. Arora further submitted that the petitioner has concealed the fact about Testamentary Case No. 03 of 1991, which was converted as Testamentary Suit No. 03 of 1996, which was allowed after contest in favour of respondent nos. 2 and 3 on 05.02.2001. The appeal against the said judgment and order was also dismissed on 23.09.2005. After the testamentary suit was allowed in favour of respondent nos. 2 and 3, the petitioner filed Title Suit No. 76 of 2001 in the court of learned Sub Judge-IV, Patna seeking partition of the joint property of the family at Patna originally belonging to his mother which was bequeathed by her in favour of the respondent nos. 2 and 3, which he claimed to be his joint family property. The said suit dismissed on 04.12.2003 and a civil revision filed against the said order was also dismissed by the High Court. Since, the petitioner under influence of his relatives started to dispute the settled position, respondent nos. 2 and 3 were constrained to file the petition for grant of letters of administration vide LA Case No. 09 of 1998. On receipt of notice, petitioner appeared before the learned trial court through his Advocate on 10.01.2000 and continued to appear till 20.03.2001. However, the petitioner did not file any caveat under Section 284 nor any objection under Section 286 of the



Indian Succession Act. As the petitioner and his daughter continued staking claim on the properties in Sitamarhi and also started negotiation to sale the properties, in order to protect their properties, the respondent nos. 2 and 3 filed Title Suit No. 409 of 2022 against the petitioner seeking permanent prohibitory injunction and an interim order has been passed in favour of the respondent nos. 2 and 3, but the petitioner has also concealed this fact. Mr. Arora further submitted that that the petitioner and respondents are continuously litigating and it is not believable that the petitioner came to know about the LA case only in September, 2003 and such averment is completely false. Mr. Arora further pointed out that Patna High Court Rules provide that the affidavit in support of caveat has to be filed within 08 days of the caveat being lodged, otherwise the caveat will be discharged. In the present case, neither any caveat nor any objection have been filed for all these years.

Mr. Arora referred to the decision *In Re: Ramautar Singh @ Ganesh Shanker (In the Goods of Late Rajo Singh)*, reported in *1994(1) PLJR 636* wherein this Court held that a delay of little more than a year in filing caveat after appearing in the matter and filing affidavit in support, could not be allowed. Mr. Arora further referred to the decision *In Re: Late Rajo*



Singh Ramautar Singh, reported in ***AIR 1995 PATNA 122***, wherein it has been held by this Court that if despite notice a person did not file caveat for over three years, such person could not be allowed to file the caveat as conduct and intention of such person did not appear to be bonafide. In the present case, the petitioner has notice of the proceeding for well over 23 years and hence his contention that he was not aware about the pendency of the LA Case No. 09 of 1998 is not believable.

Mr. Arora further submitted that after restoration of LA Case No. 09 of 1998, notices were issued and all the respondents were served and all of them appeared except the petitioner Devesh Pratap Singh. The petitioner finally appeared on 11.09.2023, but did not disclose how he came to know about the present case. The obvious inference is that the petitioner knew all along about the proceeding and had been keeping close watch and appeared at a convenient time. Furthermore, the notice sent to the petitioner was received at the address of the petitioner, which is Flat No. 402, Tower 19 of Bipul Green, Gurugram Haryana and also the Flat No. 502 belonging to the daughter of the petitioner. Tracking report of the notices shows, it was delivered on 17.02.2023 and was not returned. Mr. Arora further submitted that the petitioner has made a wrong statement



in Para-19 of his petition. The respondent nos. 2 and 3 have filed their written statement on 27.01.2023 in Partition Suit No. 386 of 2022 and also a petition under Order 7 Rule 11 of the Code of Civil Procedure and in both the documents, averments have been made about pendency of LA Case No. 09 of 1998. This fact is clear from the court record. Another wrong statement made by the petitioner is that witnesses of the Will have died and none of the witnesses is alive. The true fact is that both the attesting witnesses of the Will are still alive and one has already been examined and examination of other witness was allowed through court appointed Commissioner. Mr. Arora further submitted that irrelevant objections have been raised by the petitioner, who denied filing of written statement in Partition Suit No. 386 of 2022 but admits receiving intimation through the petition filed on 27.01.2023 under Order 7 Rule 11 of the Code of Civil Procedure and both written statement and the petitioner were filed on same date. Once the fact came to the knowledge of the petitioner, it was incumbent upon the petitioner to appear in the letters of administration case. Therefore, the learned trial court recorded a correct finding that the petitioner has been aware of the proceeding and hence it did not allow the petitioner to file caveat or objection. Mr. Arora



further submitted that mentioning the facts about dismissal of the letters of administration case, could not be any help to the petitioner. The petitioner has not even been providing his correct address and this fact is apparent from the suits filed by him in July, 2022. The petitioner could not be allowed to put the clock back at such belated stage. Mr. Arora reiterated that on receipt of notice, the petitioner appeared through his counsel on 10.01.2000 in the LA case for the first time and filed his *vakalatnama* and also filed an application seeking time. Thereafter, he appeared on different dates through his Advocate. However, neither any caveat under Section 284 and nor any objection under Section 286 of the Indian Succession Act was filed by the petitioner or for that matter by any other person. Moreover, the petitioner was granted a final opportunity on 15.01.2001 for filing the caveat/objection, which was not filed by the petitioner and hence the right to file the same stood automatically closed. Mr. Arora also pointed out the fact that the petition is not maintainable since the affidavit in support of the petition has been filed by a person who is not competent to swear the affidavit. The petitioner has not authorized his daughter Mukti Bharadwaj to represent him. Merely mentioning the fact about the daughter and her capacity as representative in



the petition would not suffice and the petitioner was required to move a proper application in this regard as provisions of Order 1 Rule 8 of the Code of Civil Procedure does not apply in case of the petitioner. Mr. Arora further submitted that the petitioner has further failed to show any caveatable interest and from the facts enumerated on behalf of the answering respondents, it is amply clear that the petitioner would not have any right in the matter. Thus, Mr. Arora submitted that there is no infirmity or error in the impugned order and the same needs to be sustained.

05. In the present matter, after appearance of respondent nos. 2 and 3, other respondents have not been issued any notice since the respondent nos. 2 and 3 are the main contesting respondents, who appeared without any notice in this case and the matter has been taken up for disposal.

06. I have given my thoughtful consideration to different aspects of the matter. At the outset it appears quite strange that on one hand the petitioner claims himself to be a trustee under the Will of his father and on the other hand he wants to oppose the execution of the Will by filing objection. The Probate/LA case came to be filed in the year 1998. Thereafter, the petitioner appeared in year 2000. But, he did not file any caveat or objection. The said LA case was dismissed on



30.10.2007 and it was subsequently restored on 09.08.2011 and again came to be dismissed on 07.04.2018 for non-filing of probate duty. Thereafter, LA Case No. 09 of 1998 again got restored vide order dated 26.02.2021 and the case was proceeded *ex parte* vide order dated 22.08.2023 against the petitioner. On appearance of the petitioner, he was permitted to participate in the proceeding and allowed to cross-examine the witnesses of applicant while debarring him from filing caveat. The learned trial court has passed a speaking order giving reasons for not allowing the application of the petitioner. When the petitioner appeared for the first time, he failed to exercise his right to file the caveat or objection under Sections 284 and 286 of the Indian Evidence Act, though he was granted a final opportunity on 15.01.2001. The Probate/LA case was dismissed for the first time on 30.10.2007 till that time the petitioner did not make any effort for filing his objection. Even after last restoration of Probate/LA case in 2021, the claim of the petitioner that he was not having any notice, appears to be hollow, does not appear to be believable and seems spurious, as the facts emerge from the record. Admittedly, the petitioner and his daughter filed two partition suits bearing Partition Suit Nos. 385 of 2002 and 386 of 2022



wherein the respondent nos. 2 and 3 appeared and filed their written statement in Partition Suit No. 386 of 2022 and also an application under Order 7 Rule 11 of the Code of Civil Procedure on 27.01.2023. It is also strange that though the petitioner admits getting information of pendency of LA case through the application filed under Order 7 Rule 11 of the Code, he denies filing of written statement which was also filed on the same date. Once, the petitioner came to know about the pendency of the LA case, it was incumbent upon the petitioner to immediately appear and move proper application before the court concerned. The folly of the petitioner does not end here. It also appears the petitioner was served on his address as well as address of his daughter at Gurugram as the tracking report of notices sent through postal department shows. Thus, it could be safely concluded that the petitioner was served and he is merely feigning ignorance on this count. Further, after making his appearance on 11.09.2023, the petitioner did not disclose the manner or mode by which he came to know about the pending LA case.

07. The facts enumerated above go on to show that the petitioner was having knowledge and still chose not to appear on the date fixed and was rightly proceeded *ex parte*.



Thus, the whole claim of the petitioner appears to be based on wrong submission and for this reason, I do not think the petitioner has been able to make out a case in his favour or to show that there is any error of jurisdiction in the order passed by the learned trial court which needs to be corrected. Therefore, the order dated 07.11.2023 passed by the learned 3rd Additional District Judge, Sitamarhi in LA Case No. 09 of 1998 is hereby affirmed.

08. Accordingly, the present Civil Misc. Petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	14.05.2024
Uploading Date	29.06.2024
Transmission Date	NA

