

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.256 of 2019

In
Miscellaneous Appeal No.1035 of 2010

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Ravindra Prasad Singh Son of Arjun Singh Resident of Village-Daniyalpur,
P.S.-Teghra, District-Begusarai

... .. Petitioner/s

Versus

1. Sunita Devi Wife of Late Ram Autar Rai Resident of Village-Daniyalpur,
P.S.-Teghra, District-Begusarai.
2. Birendra Rai Son of Late Chandrakant Rai Resident of Village-Daniyalpur,
P.S.-Teghra, District-Begusarai

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Archana Sinha @ Archana Shahi, Sr. Advocate

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

7 08-05-2025 Heard the parties.

2. The present petition has been filed for the grant of
following relief(s):

*“for review of the judgment and order dated
04.12.2018 passed by the Hon’ble Mr. Justice
Prakash Chandra Jaiswal (as his lordship then
was) by the Hon’ble Court has set aside the
order dated 06.06.2009 passed by Sub-Judge-I,
Begusarai in Misc. Case No. 14 of 2004 whereby
the learned court dismissed the petition for the
vocation of probate filed by the petitioners.”*



3. The petitioner came before this Court challenging the order passed by the learned Sub-Judge-I, Begusarai in Misc. Case No. 14 of 2004 whereby it dismissed the petition for revocation of probate filed by the petitioner.

4. The said Misc. Appeal No. 1035 of 2010 (Sunita Devi & Anr. vs. Ravindra Prasad Singh) was taken up by a coordinate Bench (Hon'ble Mr. Justice Prakash Chandra Jaiswal as his lordship then was) on 04.12.2018 and the relevant paragraph read as follows:

“10. Though the appellants filed the petition for revocation of the probate in the court of Sub Judge-I but, in my considered opinion, by filing the petition before the court of Sub Judge-I or by agreement the court which has inherent lack of jurisdiction to decide the aforesaid matter is not empowered to entertain the said matter. Sub Judge-I on receiving the aforesaid petition of the appellants, instead of deciding the same itself ought to have referred the matter to the District Judge, Begusarai for its hearing as under Section 264 of the Act it is only District Judge who is authorized to dispose of the matters of



*revocation of probate and letters of administration. In **Uday Chand Mahatab Bahadur's (supra)** the Calcutta High Court has ruled that the district delegate cannot decide an application for revocation of probate. An application for revocation of probate being contentious matter the district delegate cannot decide it. He should return such application for being presented before the court of District Judge. The case law in **Mt. Daho Kuer (supra)** as relied upon by the respondent is not applicable in the case under hand as in the aforesaid case the District Judge by his order dated 5th of February, 1924 had transferred the case to the Additional District Judge for disposal under Section 8 (2) of the Bengal N.W.P. and Assam Civil Courts Act and this Court has held that under said Act the functions of the District Judge under the Probate and Administration Act and Indian Succession Act relating to grant and revocation of probate have been assigned to Additional Judges An Additional Judge so*



appointed discharge any of the functions of a District Judge which the District Judge may assign to them and in the discharge of those functions, they shall exercise the same powers as of the District Judge. While in the case under hand only the power of granting probate and letter of administration has been assigned by District Judge to Sub Judge. Moreover, the aforesaid case was decided prior to proclamation of the Indian Succession Act, 1925. Another case law (Shikh) Kalloo (supra) cited by learned counsel for the respondent is also not applicable in the case under hand as in the said case it was not the matter of revocation of probate rather grant of probate wherein it has been held by Oudh High Court that an Officer who is both a Subordinate Judge and district delegate, although as a district delegate cannot dispose of a contentious proceeding, nevertheless he can do so as a Subordinate Judge if the proceeding is transferred to him by order of District Judge while in the case under



*hand it is a matter of revocation of probate and under Section 264 of the Act only the District Judge has got jurisdiction to decide the said matter. So far as another judgment relied upon by the learned counsel for the respondent in **Hans Raj Mittal (supra)** is concerned, though this case relates to revoking of probate granted in favour of the appellant by the court of Sub Judge, but it is also not applicable in the case under hand as in my considered opinion under Section 2(bb) of the Act, Principal Civil Court of original jurisdiction is not the Sub Judge rather the District Judge. District Judge includes the Additional District Judge. The District Judge either may himself hear the revocation matter or transfer it to any A.D.J. and not to the Sub Judge. This Court in the case of **Mt. Daho Kuer (supra)** has ruled that "District Judge" mean "the Judge of a principal civil court of original jurisdiction".*

11. In the facts and circumstances of the case, I find and hold that the aforesaid order passed by



the learned lower court is wrong, illegal and without jurisdiction and is set aside. Accordingly, this appeal is allowed.”

5. Learned counsel for the petitioner submits that the Court erred in allowing the petition by holding that the Principal Civil Court or Original jurisdiction is not the subject rather it is for the District Judge either to hear the matter itself or transfer it to any Additional District Judge.

6. This Court has gone through the facts of the case as also the order of the Court.

7. The Court rightly held that the matter was not revocation of probate rather jurisdiction and it is only the District Judge that has got the jurisdiction to decide the matter. He/She can hear it himself/herself or transfer to any additional District Judge and not to a Sub-Judge.

8. This Court do not find any error in the order. The review petition is accordingly, dismissed.

(Rajiv Roy, J)

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