

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1171 of 2024**

**In
Civil Writ Jurisdiction Case No.19163 of 2015**

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Tripurari Sharan Pandey Son of late Rama Shankar Pandey, R/o LIG, 42
Housing Board Colony, P.O. Rampur , Ner Asha Singh More, Gaya.

... .. Petitioner

Versus

Arun kumar Sinha Son of late Ishwari Prasad, R/o Flat No. A/E 22, Aruna
Enclave, Chirachas, Bokaro, P.S. Chas, District- Bokaro, Jharkhand.

... .. Respondent

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Partha Gaurav, Adv. Mr. A.K. Pandey, Adv. Ms. Divya Prakash, Adv. Mr. Rahul Kumar, Adv. Mr. Ranjan Kumar Dubey, Adv.
For the Respondent/s	:	Mr. Sri Nandan Singh, Sr. Advocate Mr. Ram Prasad Singh, Adv. Mr. Dharendra Narain Malik, Adv.

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**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT**

Date : 17-07-2026

Heard learned counsel for both the parties.

2. The instant application has been filed on behalf of the petitioner for quashing the order dated 22.09.2015 passed by learned VIIth Additional District Judge, Gaya, in Probate Case No. 08 of 2015/57 of 2014.

3. Learned counsel for the petitioner-applicant submits that the petitioner has instituted Probate Case No. 08 of 2015/57 of 2014 before the learned District Judge seeking grant of probate in respect of the registered Will dated 14.10.2009 executed by the testator, Late Ghanshyam Prasad, in favour of the petitioner-



applicant pertaining to the properties described therein. It is further submitted that Late Ghanshyam Prasad, during his lifetime, executed the aforesaid registered Will dated 14.10.2009 bequeathing his self-acquired residential house standing on land measuring 2,356 square feet situated at Mohalla–MIG 40, Housing Board Colony, District Gaya, in favour of the petitioner-applicant.

4. Learned counsel further submits that late Ghanshyam Prasad was son of late Rameshwar Prasad who had four sons and four daughters amongst which only two sisters namely Savitri Prasad and DR. Prabha Prasad are alive. He further submits that objector/caveator being the nephew of Ghanshyam Prasad has filed this objection petition while he has no caveatable interest in the bequeathed property through registered deed of Will.

5. Learned counsel for the respondent/caveator submits that objector has been served with notice by the Court of learned District and Sessions Judge with respect to this probate case filed by applicant namely, Tripurari Sharan Pandey and has filed objection/caveat as this objector/caveator has got direct subsisting interest in the house property being House No. MIG 40 situated at Mohalla Chanakyapuri Colony, P.S. Rampur, Town/District-Gaya.

6. He further submits that he has got direct interest having share along with other class-II heir of Ghanshyam Prasad



(deceased) who died unmarried. The said Ghanshyam Prasad to whom the House no. 40 was allotted by Bihar State Housing Board Gaya died unmarried, so the entire interest in the said house has been inherited and succeeded by his class-II heirs inclusive of this objector/caveator and the detail particulars of class-II heirs of late Ghanshyam Prasad is also annexed with the objection petition. As per his submission common ancestor late Rameshwar Prasad died leaving behind three sons and three daughters his two daughters are still alive namely Savitri Prasad and Dr. Prabha Prasad but the applicant has not arrayed Savitri Prasad in the column of near relative. Only Dr. Prabha Prasad and objector/caveator namely Arun Kumar Sinha have been arrayed as near relative in para 9 of the probate application.

7. Learned counsel for the respondent/objector further submits that applicant has not filed this probate application with clean hands because he has not mentioned the name of Savitri Prasad one of the sister of late Ghanshyam Prasad. He further submits that the said house which is the subject matter of the Will was not transferred/registered in favour of Ghanshyam Prasad conferring title by Bihar State Housing Board, Gaya. Consequently, the objector/caveator and other class-II heir, as stated above, having inherited the said allotted house bearing



House No. MIG 40 situated at Mohalla Chanakyapuri Colony, P.S. Rampur, Town/District-Gaya and they are legally entitled to get the said flat registered in their favour from Bihar State Housing Board, Gaya.

8. Learned counsel further submits that the alleged Will, relied upon by applicant of probate case, must have been brought in existence by playing fraud and by fraudulent means on Ghanshyam Prasad, who had never any intention to execute Will in favour of stranger to the family and not even of caste of late Ghanshyam Prasad. Furthermore, late Ghanshyam Prasad, who was a professor was also in know of the fact that he cannot make a Will of said House MIG 40 as the same, till his life time, was not transferred/registered as sale deed by Bihar State Housing Board, Gaya in favour of Ghanshyam Prasad (now deceased). Consequently, no title ever accrued in said house MIG 40 to Ghanshyam Prasad, yet it appears by fraudulent means and after putting undue influence on Ghanshyam Prasad (deceased) the alleged Will has been prepared which does not bear the actual signature of Ghanshyam Prasad.

9. After hearing the learned counsel appearing on behalf of both the parties it appears that the only moot question to decide this Civil Miscellaneous case is that whether the petitioner being



the nephew of testator has caveatable interest in the probate case or not?

10. During course of argument, the leading case ***Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others*** reported in ***(2008) 4 SCC 300*** was referred and relied upon by both the parties. The above judgment has been relied upon in the recent judgments also i.e. ***Saroj Agarwalla (dead) Thr. LR Abhishek Agarwalla Vs. Yashel Jain*** passed in ***Civil Appeal No. 473 of 2009***. Para 9 of the said judgment reads as under:-

*“9. Learned counsel for both the parties have addressed us at some length as to the meaning of the words "caveatable interest". The matter is no longer res integra in view of a detailed discussion of this term in the case of **Krishna Kumar Birla v. Rajendra Singh Lodha**¹. Paragraphs 59 to 86 of this judgment refer to large number of authorities of this Court as well as various High Courts. The conclusions flowing from that judgment including the proposition of law in paragraph 86 clearly support the case of the respondents in both the appeals that they have a caveatable interest. The test which may be applied in the present case is: Does the claim of grant of probate prejudice the respondent's right because it defeats some other line of succession in terms whereof the respondent as a caveator asserted his/her right? Since the answer, in the facts of the case would be in the affirmative, we are in agreement*



with the view taken by the Division Bench that respondents have a caveatable interest”

11. Another recent judgment that has relied upon the decision in ***Krishna Kumar Birla v. Rajendra Singh Lodha and Others*** is ***Yash Vardhan Mall v. Tejash Doshi***, decided by the Hon’ble Supreme Court in ***Civil Appeal Nos. 19635–19636 of 2017***. Para 8 of the said judgment reads as under:-

*“This Court in **Krishna Kumar Birla v. Rajendra Singh Lodha and Ors. (2008) 4 SCC p.300** considered the point of caveatable interest in a detailed manner and held that no hard and fast rule can be laid down. The existence of a caveatable interest would depend upon the fact situation of each case. In the instant case, the High Court found that the Appellant has caveatable interest, but the caveat filed by the Appellant was discharged on the ground that the affidavit filed in support thereof was bereft of an averment doubting the due execution of the Will dated 22.04.2013. For the reasons stated supra, we are satisfied that the affidavit filed in support of the caveat fulfils the condition of Rule 25.”*

In the present case, the respondent/caveator had specifically averred and doubted the genuineness of the Will dated 14.10.2009 executed by the testator, namely, Late Ghanshyam Prasad.



12. Learned counsel for the respondent placed reliance on the judgment passed in the case of **G.Gopal Vs. C.Baskar & Ors.** Passed in **Civil Appeal No. 6067 of 2008** by Hon'ble Apex Court apart from the above mentioned judgments. Para 4 of the said judgment reads as under:-

“4. We have heard Mr. Thiayagarajan, learned counsel appearing on behalf of the appellant and Mrs. R.Ragini, learned counsel appearing on behalf of the respondents. We have also examined the judgment under appeal as well as the materials on record. The only question that was agitated before us by Mr.Thiayagarajan, learned counsel appearing for the appellant challenging the judgment of the High Court revoking the probate granted in respect of the Will executed by the testator, was that the respondents having no caveatable interest in the estate of the deceased, the application for revocation filed by them could not be allowed. We are unable to accept these submissions made by Mr.Thiayagarajan, learned counsel appearing on behalf of the appellant only for the simple reason that admittedly the respondents were grand children of the testator and they have claimed the estate of the deceased on the basis of a settlement deed executed by the testator himself which admittedly was revoked by the testator. That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be



served before the final order is passed. It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator.”

13. In the case of **Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others** the Hon'ble Supreme Court has discussed at length and given guideline about caveatable interest in para 59 onwards of the said judgment.

14. In the present case, the objector/caveator has been arrayed as near relative in the probate application and he was summoned to appear before the Court. If the summon has been issued by the Court to a person, he cannot be debarred and restrained to say and assert what the applicant wants in his application otherwise provision of summoning to near relative would be meaningless. In this case, the respondent appeared as near relative being nephew of testator and alleged that the above registered deed of Will is fake and forged one and he alongwith other co-sharers have interest in the property which is the subject matter of the probate case. He has filed the objection petition under Section 284 of Indian Succession Act.

15. In the case of ***Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others*** the scope of Section 284 of Indian



Succession Act has been discussed in paragraph nos. 112 and 113 which reads as under:-

“112. Section 284 of the 1925 Act may have to be construed keeping in view the aforementioned legal principles. It does not lay down the qualification or disqualifications of the caveator. Once a caveat is filed, it is for the court to determine the question as to whether the caveator has any caveatable interest or not.

113. Section 284 of the 1925 Act only provides for a forum and nothing more. It has nothing to do with qualification. Drawing our attention to the decisions prevailing prior to coming into force of the 1935 Act, some of which have been noticed by us hereinbefore, as also the decision of the Bombay High Court in Pirojshah Bikhaji v. Pestonji Merwanji the learned senior counsel contended that the legislature having not changed the wordings of the earlier statute despite judicial interpretation of the terminologies thereof, must be held to have not intended to rectify the same.”

16. After discussing the caveatable interest, the Hon’ble Supreme Court has held in para 103 as under:-

“103. what would be the caveatable interest would, thus, depend upon the fact situation



obtaining in each case. No hard-and-fast rule, as such, can be laid down. We have merely made attempts to lay down certain broad legal principles.”

17. In this case, respondent has appeared after due service of notice/summon and have filed objection, he is admittedly near relative, that is why his name has been arrayed in the petition and he got some objection with regard to grant of probate pertaining to the subject matter of the Will in question. One of the class-II heir i.e. own sister of testator namely Savitri Devi has not been arrayed as near relative in the probate application which goes to show the lack of bona fide intention of the petitioner-applicant. All these facts suggest that respondent has a caveatable interest in the subject matter of the Will.

18. Hence, I find that there is no illegality and impropriety in the impugned order and accordingly it is upheld as a result of which the instant civil miscellaneous application stands dismissed.

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
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