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(2014) 04 PAT CK 0095

In the Patna High Court

Case No : Test Case No. 7 of 2012

In The Goods of Late Shrimant Kumar Choudhary, Dharmesh Kumar — APPELLANT

Vs

X — RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Citation : (2014) 3 BBCJ 25 : (2014) 3 BLJud 18

Hon'ble Judges : Mr. Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Raj Kishore Prasad Singh, Advocate, for the Petitioner; None, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mungeshwar Sahoo, J.—Heard the learned counsel, Mr. R. K. Srivastava for the caveators, one filed by Shishir Kumar Choudhary, second filed by Vijayawant Kumar Choudhary and the third filed by Balwant Kumar Choudhary and Samant Kumar Choudhary jointly.

2. The testamentary case has been filed under Section 276 of the Indian Succession Act, 1925 by the petitioner, Dharmesh Kumar for the grant of probate in respect of the properties mentioned in the schedule of the petition which are the estate of the deceased testator namely Shreemant Kumar Choudhary.

3. The caveators have filed the caveat opposing the grant of the probate with respect to the Will. The caveators case is that in fact, subsequent to the alleged Will sought to be probated by petitioner, another Will has been executed by the deceased testator, Shreemant Kumar Choudhary superseding his earlier Will in favour of four caveators and two others and on the basis of the subsequent Will executed by the testator, the caveators have already filed probate case being Probate Case No.14 of 2012 which is pending before the District Judge, Samastipur. Therefore, they have got caveatable interest in this probate case.

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4. At the time of hearing of this caveat applications, the learned counsel, Mr. R.K.P.Singh for the applicant relying on various decisions of this Court, Hon''ble Supreme Court and other High Courts such as, 1978 BBCJ 265(Darogi Singh v. Smt. Girja Devi), AIR 1983 Patna 149(Kalika Singh and another v. Awadhesh Narain Singh and others), AIR 1978 Patna 220(Narayan Sah v. Sm. Devaki), AIR 1995 Patna 122 (In Re : Late Rajo Singh Ramautar Singh alias Ganesh Shankar), AIR 1964 Calcutta 34 (In the Goods of Mahammad Bashir (deceased)), AIR 1941 Patna 475(Kashi Nath Singh v. Dulhin Gulzari Kuer) and (2008) 4 Supreme Court Cases 300 (Krishna Kumar Birla v. Rajendra Singh Lodha and others) submitted that the persons who have got no interest in the estate of the deceased in presenti have got no caveatable interest and they cannot be allowed to contest the probate application. According to the learned counsel, Ram Ashray Choudhary has four sons namely, Shreemant Kumar Choudhary(testator), Hemant Kumar Choudhary, Silwant Kumar Choudhary and Yashwant Kumar Choudhary. On the death of Shreemant Kumar Choudhary, the property will devolve on Yashwant Kumar Choudhary in view of the Hindu Succession Act because his two other brothers, Hemant Kumar Choudhary and Silwant Kumar Choudhary predeceased the testator, Shreemant Kumar Choudhary. Therefore, the sons of Hemant Kumar Choudhary being nephew of the testator will have no interest in the property of Shreemant Kumar Choudhary and likewise, three other caveators who are the sons of Yashwant Kumar Choudhary have also got no caveatable interest because the property of Shreemant Kumar Choudhary devolved on their father, Yashwant Kumar Choudhary who is still alive. In such circumstances, in view of the aforesaid decisions, the caveators have got no caveatable interest as such, the caveats filed by them be discharged.

5. On the other hand, the learned counsel, Mr. Srivastava appearing on behalf of the caveators submitted that all the decisions relied upon by the learned counsel for the petitioner are not applicable in the present case because in none of those cases, the caveators were claiming special interest in the estate of the testator and in the present case, the caveators are claiming special interest in the testator''s estate because subsequent to the alleged Will which is said to be forged by the caveators, the testator has already executed another Will in favour of the caveators along with two others on 30.11.2011 and for obtaining probate of the said Will, they have already filed probate case being Probate Case No.14 of 2012 which is pending still for decision. Now, therefore, the petitioner is claiming for the grant of probate for estate of the deceased and the caveators are also claiming probate for the estate of the deceased and each of them are saying that the Will executed against the other side is forged Will. The learned counsel further submitted that the petitioner who has filed this testamentary case for the grant of probate is no way related with the testator, Shreemant Kumar Choudhary. According to the learned counsel, a person who has filed a probate case on the basis of Will said to have been executed by the testator has caveatable interest and likewise, a person who has got a slightest interest or is related remotely with the testator has also got caveatable interest. In support of

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his contentions, the learned counsel relied upon AIR 2007 Calcutta 218(Jagdish Prasad Tulshan (D) by LR v. Yasheel Jain) and (2008) 10 Supreme Court Cases 489(G. Gopal v. C. Baskar and others) and the judgment of the Hon''ble Supreme Court in Civil Appeal No.8031 of 2001 dated 10.03.2010(Jagjit Singh v. . Pamela Manmohan Singh).

6. In Kalika Singh case(supra), this Court has held that a person who can maintain a suit in respect of the property of the testator is a person having interest in the estate of the deceased. Therefore, such a person can object to the grant of probate and can enter as a caveator in the probate proceeding. If such a person raises objection about the validity of the title of the testator to execute a Will, such challenge cannot be made in a probate proceeding. Such issue can be tried in a suit. But it does not mean that he will have no locus standi to object the proceeding.

7. In AIR 1978 Patna 220, this Court has held that any interest, however slight and even a bare possibility of an interest is sufficient to entitle a person to enter caveat in a probate proceeding. A person claiming interest in the whole property under the will executed by a co-widow of the deceased held was entitled to safeguard his interest which he got under the will and had locus standi to oppose the grant of probate or the letters of Administration of the will executed by other widow.

8. A Division Bench of this Court in 1978 BBCJ 264 considered the interest of a person claiming interest in the testator''s property. It appears that in that case, one Darogi Singh claiming to be the nephew of the testator filed the objection. At paragraph 18, the Division Bench held that on a perusal of the genealogy given in the objection petition, it is clear that prima facie, Darogi Singh has established that he has an interest in the deceased estate being son of brother of the deceased testator, Firangi Singh.

9. The Hon''ble Supreme Court recently in the case of Krishna Kumar Birla v. Rajendra Singh Lodha and others, (2008)4 Supreme Court Cases 300 held that ordinarily a caveator interest would mean an interest in the estate of the deceased to which the caveator would otherwise be entitled to, subject of course, to having a special interest therein. At paragraph 94, the Hon''ble Supreme Court has held that a person who would have otherwise succeeded to the estate of the testator, would ordinarily have a caveatable interest, any other person must ordinarily show a special interest in the estate. Therefore, in view of this decision, a person who would otherwise succeed the estate of the testator has ordinarily a caveatable interest but so far other persons are concerned, they must show special interest in the estate. At paragraph 103, the Hon''ble Supreme Court held that 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. In view of this decision, the caveatable interest of a person has to be judged considering the facts and circumstances of each case and it cannot be

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said that unless a person has an interest in the estate of the deceased, he has got no caveatable interest. As has been quoted above, Hon''ble Supreme Court has held that any other person can file caveat showing special interest in the estate. Can it be said that when they are claiming special interest on the basis of the Will for which they have already filed a probate case they have got no caveatable interest.

10. In the judgment relied upon by the caveators, Jagjit Singh v. Pamela Manmohan Singh at paragraph 86, the Hon''ble Supreme Court has enumerated certain guidelines for consideration of caveatable interest and quoted the guidelines given in the case of Krishna Kumar Birla (supra). Therefore, there is no conflicting decision of the Hon''ble Supreme Court in the case of Krishna Kumar Birla and this judgment of Hon''ble Supreme Court in the case of Jagjit Singh. It appears that in this case, the respondents were grandchildren 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. The Hon''ble Supreme Court has held that being the position we must hold that the respondents have caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. In view of the above position when the grandchildren who were claiming interest on the basis of settlement deed had already been cancelled but since they were claiming on the basis of the deed, they were held to be the person having caveatable interest. In the present case also, the caveators are claiming on the basis of the Will said to have been executed subsequently and for that, they have filed probate case. In my opinion, the caveators have got caveatable interest in the present testamentary suit.

11. So far the other decisions are concerned, it may be mentioned here that those decisions are also in the same line and there is no contrary decision laid down by the Hon''ble Supreme Court discussed above. Therefore, I am not quoting or considering other decisions relied upon by either of the parties.

12. In the result, it is held that the caveators have got caveatable interest, therefore, they are allowed to contest the present testamentary suit. Accordingly, in view of Section 295 of the Indian Succession Act, the office is directed to convert this testamentary case to a suit.

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