

(1932) 08 PAT CK 0016

In the Patna High Court

Janki Saran Sahi

APPELLANT

Vs

Rambabadur Sahi and Another

RESPONDENT

Date of Decision : 16-08-1932

Acts Referred:

Citation : AIR 1932 Patna 343

Hon'ble Judges : Rowland, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—This is an appeal against two orders of the District Judge of Muzafferpur, one dated 12th February 1930 and the other dated 14th February 1930.

2. By the first of these orders the learned Judge held that the present appellant had no locus standi to object to the grant of letters of administration in respect of the estate of one Mt. Lakho Kuer. The case of the applicants for letters of administration was that Mt. Lakho Kuer had executed a will dated 5th August 1928, in their favour in respect of certain properties which she acquired under a deed of gift dated 19th November 1923, executed by her husband Ramnandan Sahi in her favour. The objectors alleged that Ramnandan Sahi had no right to execute the gift and that the testatrix Mt. Lakho Kuer obtained no title under the gift to the estate in respect of which letters of administration could be granted. The learned Judge held that the objectors had no locus standi to object to the grant inasmuch as they were claiming as the nearest agnates of the husband of the testatrix and as such entitled to all the properties covered by the will.

3. It was contended before the learned Judge that Ramnandan Sahi had renounced the world and had become an ascetic and that therefore he had no right to execute a deed of gift in favour of his wife. But it had been held in a previous litigation that it had not been proved that Ramnandan had renounced the world. The learned Judge therefore held that if the objectors wanted to object to the grant they must establish that Ramnandan had become an ascetic after the date of the judgment in the previous litigation, and he made an

observation to the effect that they must establish it in a proper suit and if they succeeded therein it would be open to them to move the Court for revocation of letters of administration. By the second order of 14th February 1930 the learned Judge held that the will had been proved and ordered the issue of letters of administration on furnishing security.

4. It was contended by the learned advocate for the appellant that the learned Judge was wrong in holding that the objectors had no locus standi. It is clear that in order to give a locus standi to the objector he must claim some interest in the estate of the testatrix. Here the objectors are claiming a paramount interest and challenging the title of the testatrix. A probate Court cannot enter into a question of title. Mr. Shivanandan Rai produced before us a copy of the judgment of the District Judge passed after remand by the High Court in the litigation reference to which is made by the District Judge and he wanted to show that it has now been established that Ramnandan had no right to execute the gift. Even then I think that it is not a ground for objection to the grant of letters of administration. He can have his title declared in a regular suit in the presence of the person to whom letters of administration have been granted and claim possession from him; but as a probate Court the question of title cannot be gone into. The will having been proved letters of administration must stand. This appeal is dismissed but as there is no appearance on the side of the respondents there will be no order for costs.

Rowland, J.

5. I agree. The observation of the District Judge that if the objector obtains a declaration regarding the civil death of Ramnandan he may apply again to the probate Court cannot I think be supported and must be considered as obiter dictum. If the District Judge will refer to (Mahant) Ram Das Vs. Prem Das, , and the authorities there cited he will see that such an application for revocation would not be maintainable any more than the present objection. It would be for the present objector to obtain in a regular title suit both the relief of declaration and the relief as to possession.