

(1981) 01 PAT CK 0016

In the Patna High Court

Case No : C.R. No. 1285 of 1981 with C.R. 1404 of 1981

Kalika Singh and Another

APPELLANT

Vs

Awadhesh Narain Singh and Others

RESPONDENT

Date of Decision : 21-01-1981

Acts Referred:

Succession Act, 1925 — Section 283

Citation : (1983) 31 BLJR 240

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Jha, J.—I shall dispose of these two civil revision petitions (C.R. 1285 of 1981 and C.R. 1404 of 1981) by a common judgment.

2. Learned Counsel seeks permission to withdraw C.R. 1285 of 1981. The permission is allowed and the civil revision petition (C.R. 1285 of 1981) is dismissed as withdrawn.

3. Now I shall deal with C.R. 1404 of 1981, which is against an order dated 30th May, 1981, By the impugned order the Court below held that the petitioners have no locus standi to enter as caveators as they are not claiming any interest in the estate of the deceased.

4. This matter arises out of a probate proceeding. The opposite party filed an application for grant of a probate. The petitioners filed an objection to the grant of probate and they entered as caveators in the probate proceeding. It is stated in paragraph 10 of Annexure "1" as follows:

10. That the trustees are that Pyari Singh and Dwarika Singh the father of the objectors were first cousins, Pyari Singh died issueless. about 40 years ago in a state of jointness and all the properties devolved upon Dwarika Singh by survivorship who came in full possession of the same and after his death these

objectors are in possession of the same. Mossomat Ramjhari Kuer was being maintained by the joint family.

5. On a perusal of paragraph 10 in the objection petition filed in the Court below it is clear that these objectors challenged the right to execute the will by the widow of Pyari Singh. The probate Court had no jurisdiction to try the issue raised in paragraph 10. These petitioners also challenged the validity and the genuineness of the will on other grounds in the objection petition.

6. It is a settled law that a probate Court has no jurisdiction to decide about the question of title between the parties. It can be decided in a regular suit. The authority of the probate Court is required to see as to whether the will is genuine or not, u/s 283(1)(c) of the Indian Succession Act, 1925, (hereinafter referred to as the Act) it is provided that the District Judge shall issue citations calling upon all persons claiming to have interest in the estate of the deceased. Field J. in *Nobeen Chnnder Sil and Ors. v. Bhobosoonduri Dabee* ILR Cal. 460, has held as follows at page 470.

What is the meaning of the expression "persons claiming to have any interest?" It appears to me that the persons claiming to have any interest must be persons having such an interest as would entitle them to maintain a suit in respect of the subject matter of such estate. Persons having, for example such an interest as according to the practice of the Court of Chancery would entitle them to file a bill in a Court of Equity;....

This decision of the Calcutta High Court was approved by this Court in the *R.S. Sinha Vs. Miss Salena Hector*, .

7. On a perusal of these decisions it is clear 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 will be tried in a suit, But it does not mean that he will have no locus standi to object the proceeding. He will have the locus standi provided he challenges the genuineness of the will on the grounds other than title. It is the duty of the Court to disengage the chaff from the grain. Suppose a person having interest in the property of the deceased, challenges the will on two grounds namely. (i) that the testator was not competent to execute the will as he had no right in the subject matter of the probate proceeding and (ii) that the will was a forged document or was not a genuine document; the Court will try and decide issue No. 2 and will not try issue No. 1.

8. Learned Counsel for the opposite party relies on a Division Bench decision of this Court in *Kashi Nath Singh Vs. Dulhin Gulzari Kuer*, . The correctness of the decision in the case of goods of the Estate of Mrs. Elsie Augusta Black (*supra*) was not challenged before them. The decision in that case *Nobeen Chunder Sil*

and others (supra) is still a good law. In my opinion the only bar imposed on the probate Court is that the probate Court will not decide the issue of title. The probate will also decide as to whether the testator had any title to the suit property or not. The limited jurisdiction of the probate Court is to decide about the genuineness of the will.

9. In the present case the petitioners claim that they had interest in the estate of the deceased. They have also challenged the title of the testator in respect of the subject matter of the probate proceeding. These petitioners had no authority to challenge the title of the testator in view of several decisions. Even if they have challenged the title of the testator such issue will not be decided by the probate Court. Since these petitioners have also challenged the genuineness of the will on other grounds, the probate Court will try these grounds in accordance with law. I, therefore hold that the petitioners had interest in the estate of the deceased and as such they can challenge about the genuineness of the will in the probate proceeding. The objection of these petitioners are maintainable as they can maintain a suit also in respect of the subject matter of the probate proceeding. The Court below erred in law in holding that these petitioners are not entitled to interfere as caveators. In my opinion the order suffers from material irregularity. Hence I set aside the impugned order.

10. In the result, the petition is allowed and the order dated 30th May 1981, is set aside and the Court below is directed to try the case about the genuineness of the will in accordance with law keeping in view the observations made above. Parties shall bear their own costs.