

(1963) 07 PAT CK 0002
In the Patna High Court
Case No : A.F.O.D. No. 464 of 1961

Kanhaiya Missir and Others

APPELLANT

Vs

Dinanath Missir

RESPONDENT

Date of Decision : 02-07-1963

Acts Referred:

Succession Act, 1925 — Section 278(1), 63

Citation : AIR 1964 Patna 270

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : Krishna Prakash Sinha and S.K. Verma, for the Appellant; Umesh Chandra Prasad Sinha, Ramnandan Singh and Dindayal Sinha, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This appeal has been filed by the appellants u/s 299 of the Indian Succession Act; and it is directed against the order of the District Judge-refusing to revoke the grant of letters of administration dated the 13th of April, 1953. The facts are as follows: One Indradeo Missir is said to have executed a will dated the 15th Sawan, 1344 Fasli. In 1952, the widow of the executant had applied for letters of administration with respect to the will. Letters of administration was granted in favour of the widow on the 18th of April, 1953. It appears that thereafter in 1958, the appellants had filed a title suit, numbered as 147 of 1958, praying for a declaration that a sale deed executed by the widow in favour of Dinanath was not supported by legal necessities and was not therefore, binding on the plaintiffs as the reversioners of Indradeo. On the 29th of May, 1959, Dinanath had filed a written statement in suit in which reference was made to the will and to the grant of letters of administration in favour of Indradeo's widow. Thereafter, on the 18th of June, 1960, the present appellants filed a petition, mentioning Section 151 of the Code of Civil Procedure, praying that the grant of Letters of Administration on the 18th of April, 1953, may be recalled. Upon hearing the parties, the learned District Judge has rejected this petition.

Hence this appeal,

2. The substantial point urged by the learned counsel for the appellants is to the effect that as no special citation had been issued on the appellants in connection with the widow's application for letters of administration, the grant should be revoked. It may be stated that the appellants had also contended before the learned District Judge that the will was not a genuine one, but the learned Judge has held the will in question to be a genuine document. It is, however, not necessary to consider this point at this stage, as, according to the learned counsel for the appellants, the principal point is whether the grant should be revoked or not; and, it is urged that if the grant is revoked, then in an appropriate proceeding, the question of the genuineness of the will will be gone into, if fresh steps are taken by the widow for a regrant of letters of administration. I will, therefore, confine this appeal to the main question urged by the learned counsel for the appellants. It is contended that the application before the learned District Judge was in effect an application u/s 263 of the Indian Succession Act; and the grant of the letters of administration in favour of the widow should have been revoked under Explanations (a), (b) and (c) of Section 263. Reference is also made to the second illustration u/s 263 which states that a grant may be revoked if it was made without citing parties who ought to have been cited. Thereafter, the learned counsel has relied upon Section 278(1)(b) of the Act and has contended that it was incumbent upon the widow of Indradeo to have mentioned in her application for letters of administration about the family and other relatives of the deceased, and their respective residences. It is, therefore, urged that as the appellants were not cited as parties and as no citation was issued upon them, the grant ought to have been revoked.

Having heard learned counsel for the parties, it appears to me that the contentions of the learned counsel for the appellants cannot succeed in view of the conclusions arrived at by the learned District Judge on the materials on record. It appears that there had been a partition in 1940, as evidenced by Exhibit A, a registered deed of partition, dated the 27th of January, 1940, in which the parties were Rajendra Missir, father of the appellants, and the widow of Indradeo Missir. The will in question was mentioned in that deed of partition and the fact of partition after the death of Indradeo Missir, between Rajendra and the widow has been admitted by Kanhaiya Missir, one of the appellants in this case. The learned Judge has held that the existence of the will and the grant of letters of administration were known to the applicants from a long time before the filing of the written statement by Dinanath. He has refused to accept the appellants' case that they had come to know for the first time about the will and the grant from Dinanath's written statement. Then it appears that the widow had taken all steps she had then thought necessary before obtaining a grant of letters of administration in her favour. In fact, notices had been served in the village by beat of drum. The learned Judge has held that the applicants before him were fully aware of the filing of the application for a grant of letters of administration by the widow. According to the learned Judge no fraud had been perpetrated by

the widow in obtaining the grant and no facts had been suppressed by her in order to mislead anybody. Even if the appellants were persons who should have been appraised of the proceeding in 1952-1953, mere omission to issue citation to them cannot be an absolute ground for revoking the grant made in 1953. On the facts found by the learned District Judge, I am not in a position to hold that he exercised his discretion erroneously in refusing to revoke the grant made on the 18th of April, 1953. Therefore, in my opinion, the appeal is without any merit and it must be dismissed with costs.