

(2001) 12 PAT CK 0058
In the Patna High Court
Case No : Test Case No. 5 of 1997

Late Kameshwar Prasad Sinha Shrimati Leshma Dutt @
"Lesee" APPELLANT

Vs

Shri Subhash Sinha RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Succession Act, 1925 — Section 192, 193, 194

Citation : (2002) 1 PLJR 411

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : S.K. Majumdar, K.K. Sharan, Wasi Akhtar, Amit Shrivastava, A.J. Bahadur and B. Choudhary, for the Appellant; R.K.P. Singh and Balbhushan Choudhary, for the Respondent

Judgement

Nagendra Rai, J.—The present application has been filed by the Petitioner-Smt. Leshma Dutt alias Lessee, who has been granted Letters of Administration by order dated 5.11.1999 with regard to the Will executed by her father late Karneshwar Prasad Sinha, for handing over the possession of the movable and immovable properties covered by the Will, which are in unauthorised occupation of Subhash Sinha (Objector) and his wife Superna Sinha.

2. The said prayer of the Petitioner has been resisted by aforesaid Subhash Sinha and his wife Superna Sinha on the ground that a part of the property, covered by the Will, has been gifted by the wife of late Karneshwar Prasad Sinha, namely, Shivrani Sinha in favour of Superna Sinha. Oral gift was also made with regard to the remaining property and said Shivrani Sinha also adopted Subhash Sinha (objector). In other words, they claim title and possession over the property covered by the Will by virtue of the registered deed of gift, oral gift and adoption.

3. This application, in substance, is an application u/s 192 of the Indian Succession Act (hereinafter referred to as "the Act") for giving possession of the property, covered by the Will, which is in unauthorised occupation of objector

Subhash Sinha and Superna Sinha. Chapter VII of the Act deals with the Protection of Property of deceased and Section 192 thereof provides, inter-alia, that if any person dies leaving property movable or immovable, any person claiming a right by succession thereto or to any portion thereof, may make an application to the District Judge for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended and, thereafter, the District Judge has to make enquiry u/s 193 of the Act and after following the procedure u/s 194 of the Act has to pass final order. This provision is applicable in the case of succession of both types i.e. Intestate Succession and Testamentary Succession. The application has to be filed before the District Judge and the District Judge will pass an order on fulfilment of conditions mentioned u/s 192 of the Act.

4. The proceeding u/s 192 of the Act is a summary proceeding. Where a person is in possession and there is a dispute of title in regard to the property in succession then the said provision is not likely to be resorted to and only in special circumstance and on fulfilment of the condition, an order has to be passed. The order can be passed when the other side has no lawful title. Be that as it may, it is not necessary to go into the question for the simple reason that the application u/s 192 of the Act has to be filed before the District Judge and not before this Court. The Petitioner, if so advised, may file before the District Judge, Patna, who on such application being filed, will proceed under Chapter VII of the Act and pass an appropriate order in accordance with law.

5. With the aforesaid direction, this application is, accordingly, disposed of.