
(2011) 05 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 11643 of 2010

Smt. Tileshara Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(2)

Citation : AIR 2011 Patna 158 : (2011) 3 PLJR 767

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the Petitioner challenging the entire proceeding of Probate Case No. 22 of 1990 which was filed by Respondent nos. 3 to 6 in the Court of Subordinate Judge-I, Sasaram against the Estate of deceased Bhagwat Singh impleading Mostt. Muneshara Kuar and the Petitioner as opposite party nos. 2 and 3, including orders dated 15.11.2008 till 2.6.2010 and also challenging the entire proceeding of Miscellaneous Case No. 75 of 2001/T.R. No. 4 of 2008 which was registered in Fast Track Court No.-IV, Sasaram and various orders passed therein. It is further prayed that the District Judge, Sasaram be directed to decide Probate Case No. 22 of 1990 on merit in accordance with law as probate matter cannot be subject of Arbitration.

2. Learned counsel for the Petitioner raised only one point as to whether the Arbitrator was competent to decide a probate proceeding. In this connection, he relied upon a decision of the Apex Court in case of Chiranjilal Shrilal Goenka v. Jasjit Singh and Others, reported in (1993)2 Supreme Court Cases 507 in which it was held that the Arbitrator cannot proceed with the probate suit to decide the dispute in issue and the only course open is to proceed with the probate case and decide the same as expeditiously as possible. Learned counsel for the Petitioner submitted that even if there is a contest, award has to go and the probate case has to be decided afresh.

3. On the other hand, learned counsel for Respondent nos. 3 to 6 opposed the contentions of learned counsel for the Petitioner and stated that the entire matter had been decided on the basis of agreement between the parties, hence there was no occasion for the Petitioner to raise such dispute against her own contentions in the court below.

4. From the arguments of learned counsel for the parties as well as from the materials on records, it is quite apparent that Title Suit No. 501 of 1999 was filed by Tileshara Devi (Petitioner) for partition of her 1/2 share. The claim of the Petitioner was that her ancestor Ram Kishun Singh had three sons, namely Khedan Singh, Fekan Singh and Bhagwat Singh, out of whom the grandchildren of Khedan Singh are Respondent nos. 3 to 5, the grandson of Fekan Singh is Respondent No. 6 and the daughter of Bhagwat Singh is the Petitioner. The said suit filed by the Petitioner against Respondent nos. 3 to 6 was pending before the Subordinate Judge, Sasaram. On the other hand, Probate (Misc.) Case No. 75 of 2001 was filed by Respondent nos. 3 to 6 claiming on the basis of Will executed on 1.12.1995 in their favour by Bhagwat Singh (the father of the Petitioner).

5. Annexure-B to the counter affidavit of Respondent nos. 3 to 6 specifically shows that there was an agreement between the parties on 27.8.2008 that the entire dispute be referred to the Arbitrator and accordingly the Subordinate Judge, Sasaram referred the title suit before the Arbitrator whereas the Fast Track Court referred the probate case to the Arbitrator, whereafter the Arbitrator prepared the award on 31.1.2009 which was filed in the court on 13.4.2009, but no objection was raised by the Petitioner in the court within time, although remedy u/s 34(2) of the Arbitration and Conciliation Act, 1996 was available and only after passage of one and quarter years, the instant writ petition has been filed.

6. It will be interesting to note that the Will executed by father of Petitioner was in favour of Respondent nos. 3 to 6 who had filed probate case and hence if the said Respondents themselves waived their right raised in the probate case for getting the matter decided in arbitration, the Petitioner is not justified to raise any objection with respect thereto, specially when she had herself entered into agreement with the Respondents for referring the matter to Arbitrator. Hence, the case law relied upon by learned counsel for the Petitioner is not applicable to the facts of this case.

7. In the said circumstances, the entire claim of the Petitioner is absolutely frivolous and misconceived and she is not entitled to any relief claimed by her. Accordingly, this writ petition is dismissed.