

Dhirendra Kumar and anr. Vs. Binay Kumar Singh and ors.

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Court : Jharkhand

Decided On : Jun-25-2004

Reported in : [2004(3)JCR533(Jhr)]

Judge : P.K. Balasubramanyan, C.J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : WP (C) No. 2592 of 2004

Appellant : Dhirendra Kumar and anr.

Respondent : Binay Kumar Singh and ors.

Advocate for Def. : L.K. Lal, Adv.

Advocate for Pet/Ap. : V. Shivnath and; Arvind Kumar Choudhary, Adv.

Judgement :

ORDER

P.K. Balasubramanyan, C.J.

1. Heard both sides.

2. This is a proceeding under Article 227 of the [Constitution of India](#) by the opposite parties in a probate proceeding challenging the order of the Additional District Judge allowing an amendment of the application for probate.

3. It is seen that the application for probate was made by the legal representatives of the alleged legatee under the Will propounded. It is seen that the legatee died before the testator died. The opposite parties had opposed the application. The applicants in the proceeding filed an application for amendment of the original application for issuance of probate by adding paragraph 10(A) to the petition by setting up a case that subsequent to the death of the legatee and during the life time of the alleged testator, the alleged testator had made a declaration that the sons of the legatee will be the beneficiaries. This application for amendment was opposed by contending that it was beyond the scope of the proceeding initiated; that the alleged Will itself was not genuine; that the Will was fraudulent and that the amendment sought for was without any bona fides. The trial Court allowed the application for amendment. .

4. On hearing counsel for the opposite parties, the petitioners before me, I find that the objection of the opposite parties is regarding the maintainability of the application for probate, the genuineness of the Will, the genuineness of the alleged subsequent declaration and the filing of such an application in a proceeding for probate of the original Will in the form it was sought for in the petition, I think that these are all matters, which have to be decided by the Court after trial and at the time of final disposal of the proceeding. But, I find substance in the objection raised on behalf of the opposite parties, the petitioners before me, that the trial Court was completely in error in proceeding to make observations touching on the merits of the claim. The trial Court in its order itself observed that the matter is at the preliminary stage and issues and evidence are yet to come. In such a situation, it is not expected of the trial Court to deal with the merits of the claim in any manner. In fact, all the observations on merits are unwarranted at the stage of considering whether the amendment is to be allowed or not. Therefore, it is clear that the observations in the order on merits, appearing in the third penultimate paragraph of the order are unwarranted and uncalled for. They are set aside. The order of the Court below is upheld only to the extent of allowing of the amendment. In the circumstances, it is made clear that it is open to the opposite parties, the petitioners before me, to file an additional objection to the amended application, if so advised. It is the duty of the trial Court to consider all their objections while disposing of the suit after a proper trial, in accordance with law.

5. Subject to the above, the proceeding is closed.

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