

Lallan Singh and Others Vs. Binod Shankar Singh and Others

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Court : Patna

Decided On : Mar-26-2012

Judge : Shailesh Kumar Sinha

Appeal No. : Appeal from Original Order No. 727 of 2010

Appellant : Lallan Singh and Others

Respondent : Binod Shankar Singh and Others

Judgement :

1. In this appeal, the order refusing to revoke grant of succession certificate pursuant to the order dated 7.1.2002 in Succession Case No.38 of 2001 vide order dated 26.5.2010 in Revocation Case No.50 of 2002 is under challenge.

2. The short facts of the case are that on an application filed by respondents 1 and 2, a succession certificate was granted by order dated 7.1.2002 in Succession Case No.38 of 2001 with respect to certain Bank deposits to the tune of Rs.5,52,888.04 paise in different Banks, as indicated in Schedule A of the application for grant of above succession certificate. Testator Kailash Singh had a Bank locker in the concerned branch of the Punjab National Bank and the locker on being opened and in course of preparation of the inventory of the articles of the said locker of Kailash Singh, it was found that respondents no.1 and 2 were his nominees as also one Will dated 8th of August, 1999 in favour of the above nominated persons with respect to his landed property. It further appears that by

nomination, the deceased had requested the Bank Manager to treat respondents 1 and 2 as the nominees of the deceased and except these two persons, no one should be permitted to withdraw the money deposited/invested by him in the Bank. The said nomination paper was produced in the court by the Bank. The application for the grant of succession certificate upon considering the evidence on record was allowed. Accordingly, successions certificate was granted in favour of respondents 1 and 2, as aforesaid. The grant of said succession certificate was sought to be revoked by the appellants. Accordingly, they filed an application under section 383 of the Indian Succession Act, 1925 (hereinafter referred to as "the Act") for revocation. The court below, upon considering the evidence on the record, however, held that there was no defect in law in granting the succession certificate nor the same was obtained fraudulently. Accordingly, the aforesaid revocation case was dismissed by the order under appeal.

3. Learned counsel appearing for the appellants submits that the aforesaid succession certificate was obtained by respondents 1 and 2 without making the near relatives of the deceased as party. It is submitted that from the genealogical table as brought on the record of the appeal, it would appear that the at least Lallan Singh being the cousin of testator Late Kailash Singh ought to have been made party in the said Succession Case No.38 of 2001, which is a clear violation of the provisions of clause (c) of sub-section (1) of section 372 of the Act, which requires that apart from others, particulars of other near relatives of the deceased where the respective residences have been given in the application for grant of successions certificate is to be given. In other words, submission is that there is material suppression of fact and the court granting the succession certificate was kept in dark with respect to the details of the near relatives. Learned counsel further submits that on perusal of the general notice, vide Ext.C, it would appear that the notices were not validly served as witnesses on the point of service of notice were virtually the men of the applicants; with the result the appellants could not know about the proceedings of the successions certificate case. Accordingly, the order granting the succession certificate vide order dated 7.1.2002 in Succession Case No.38 of 2001 deserves to be revoked by setting aside the order dated 26th of May, 2010 in Revocation Case No.50 of 2002, whereby the court below has refused to revoke the succession certificate.

4. On the other hand, Mr Baxi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the respondents submits that absolutely there was no material suppression of fact. The near relative of the deceased was made a party in succession certificate case in which respondent no.2 was admittedly the nominee of deceased Kailash Singh, who had filed a succession certificate case. It is submitted that the correct genealogical table of the family was given and before grant of succession certificate, a general notice was published and four copies of such notices were hung. One such notice was placed in the village itself at the prominent place i.e., Chauki of the Village and other notice was hung in the Circle Office, the third notice was hung in the concerned Police Station and one copy of the same was hung in the notice board of the court. It is, accordingly, submitted that the notice was duly served and validly circulated. It was submitted that in view of the general publication of the notice, any one including the appellants, if interested, was free to come and participate in the proceedings by taking appropriate steps. That having not been done, it cannot be said that any prejudice was caused to them. Besides, it is submitted that there is no specific allegation of suppression of any material fact.

5. Learned counsel for the appellants, in reply, submits that the correct genealogical table was not brought on the record by the applicants of succession case rather the correct genealogical table was brought by the appellants before the court in Revocation Case No.50 of 2002. The correctness of the same was, however, disputed by the other side.

6. Upon considering the rival submissions of the parties, it would appear that the aforesaid case for grant of succession certificate was filed by respondents 1 and 2 stating therein that Kailash Singh had died leaving behind certain deposits in the Bank as also the landed property, which was found after the locker was opened as per the rules of the Bank and an inventory was prepared wherein the Will dated 10th of August, 1999 was found in favour of the petitioners of the succession certificate case as also respondent no.2 was the person nominated in whose favour the deceased had bequeathed his all properties in their favour.

7. The contention of the learned counsel for the appellants is that the aforesaid succession certificate case was allowed granting the succession certificate without impleading the near relatives as required to be given while making the application for succession certificate under section 372 of the Act, besides a genealogical table was also brought on the record. On perusal of the record it further appears that before hearing of the succession certificate case, a general citation, vide Ext. C, for notice to all concerned was issued and copies of such notices were placed at four different places i.e., at the prominent place of the Village, Circle Office, Police Station as also the court premises.

8. Learned counsel appearing for the respondents submits that in view of the fact that the near relatives were made party, the genealogical table was brought on the record as also the general citation so that any person interested in the proceedings could appear and participate in the proceeding by taking appropriate steps. The appellants did not appear and, as such, they cannot agitate validly that the proceeding of the grant of succession certificate suffers from any illegality. It is not in dispute that pursuant to the succession certificate granted in favour of respondents no.1 and 2, the Bank deposits of deceased Kailash Singh had been withdrawn by the said respondents and a Probate Case No.16 of 2002 with respect to the Will dated 10th of August, 1999 is still pending. This Court is not expressing any opinion with respect to the genuineness of the said Will.

9. For the reasons and discussions as made above, I do not find any merit in this appeal. The same is, accordingly, dismissed. No costs.

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