

PATNA HIGH COURT

Narayan Sah

Vs

Devaki

Civil Revn. No. 21 of 1977

(S.K. Choudhuri, J.)

23.12.1977

ORDER

S.K. Choudhuri, J.

1. This revision by the objector in a proceeding for grant of probate is directed against the order dated 28-6-1975, passed by the Additional District Judge, First Court, Muzaffarpur, holding that the objector has no *locus standi* to oppose the grant of probate or letters of administration.

2. It is not disputed that one Dhanraj Sah died leaving two widows, namely. Anurago Kuar and Inder Kuar. It is said that Anurago Kuar executed a will on 29-10-1908, in favour of the opposite party Deoki Devi with respect to her half share in her husband's estate. The aforesaid Devaki Devi claimed herself to be grand-daughter-in-law of Kapur Chand who was the brother of the testator. Anurago Kuar died on 13-1-1966. According to the opposite party the original will was in possession of the testator and in spite of search it was not available after her death and accordingly an informative petition was filed before the Sub-divisional Officer to that effect. On 12-4-1966, the aforesaid Devaki Devi filed an application for grant of probate which was registered as probate case No. 11 of 1966. Inder Kuar, the second wife of Dhanraj Sah (deceased) filed a case on 21-7-1966. In the said objection various grounds were raised against the grant of probate. It was alleged that the will was fraudulent forged, fabricated and concocted and that the will purported to have been executed on 29-10-1958, was not validly executed by Anurago Kuar. It was also stated that the names of all the relations were not disclosed and, accordingly, a genealogy was given showing all the relations of Dhanraj Sah. It is not necessary to mention other objections which were stated in the petition of objection. However, Inder Kuar died on 2-2-1971. After her death, on 9-11-1971 the petitioner entered caveat alleging that after the death of Dhanraj Sah both the co-widows succeeded to his properties half and half and after Anurago's death the property was held absolutely by Inder Kuar who was the full owner. It was further stated that on 6-5-1970, the aforesaid Inder Kuar executed a will in favour of the petitioner in respect of all the properties possessed by her. It has also been mentioned that previous to the execution of the will all the properties were gifted by the aforesaid Inder Kuar in favour of the petitioner, but, it was thought that the said deed of gift was void as permission of the consolidation officer was not taken and accordingly she executed the aforesaid will in favour of

the petitioner. The petitioner also challenged the genuineness of the will executed by Anurago Kuer in favour of Devaki Devi. It was further stated that the will was forged and did not contain the thumb-impressions and the signature of the deceased nor was it drafted, written, signed, witnessed and scribed at Anurago Kuer's instance or in her presence. It was also stated that the will was not presented before the Sub-Registrar nor admitted by the said Anurago Kuer.

3. After hearing the counsel for the parties, the court below decided by the impugned order that the petitioner has no *locus standi* to oppose the grant of probate as he has no chance of succeeding to the Estate of Dhanraj Sah.

4. It appears that as against impugned order, originally a miscellaneous appeal was filed before this court. The Stamp Reporter by his further report pointed out that miscellaneous appeal did not lie but a revision was maintainable. The learned Judge who heard the matter held by his order dated 21-10-1976, that the miscellaneous appeal was not maintainable and accordingly with the permission of the court the memo of appeal was converted into the present civil revision application.

5. Mr. Bishwanath Prasad No. II, in support of this application contended that the court below acted illegally and with material irregularity in exercise of its jurisdiction in holding that the petitioner had no chance of succeeding to the estate of Dhanraj Sah and therefore, had no *locus standi* to file caveat. According to the learned counsel, the petitioner is highly interested in the proceeding in question as he has claimed the whole of the property under the will executed by the co-widow, Inder Kuer, upon whom, according to the petitioner, on the death of Anurago Kuer, who died intestate, her half interest devolved upon Inder Kuer by survivorship and therefore, under the will executed by Inder Kuer all the properties of Dhanraj Sah would come to the petitioner after the death of Inder Kuer. Mr. Sachidanand Jha, learned counsel appearing on behalf of the opposite party, on the other hand contended that caveat can be filed by such person who claims to have an interest in the estate of the deceased and as the petitioner could not be said to be a person claiming interest in the estate of the deceased, he had no right to file a caveat. For this proposition, learned counsel relied upon Section 283 (1) (c) of the Indian Succession Act.

6. In support of the contention raised by Mr. Bishwanath Prasad No. II, he placed reliance in *Draupadi Dasya v. Rajkumari Dasya*¹ in that case an application for revocation of the grant of probate of a latter will was filed by a person who was entitled to much greater benefit under an earlier will alleged to have been executed by the same person. While dealing with the question as to whether such a person had a right to apply for revocation of the grant of probate it was held that the said person who claimed a greater benefit under the first will would not get such benefit if the probate is granted of the latter will and it must, therefore, be held that the said person had sufficient interest to oppose the grant of probate of the latter will and to apply for revocation. It has also been held in that case that it was not necessary for the person claiming under the first will to obtain a probate of that will before he could apply for

¹(22 Cal WN 564)

revocation. In order to appreciate the respective contentions of the parties, as both sides relied upon Clause (c) of sub-section (1) of Section 283 of the Indian Succession Act, it is necessary to quote the said clause here :

"283 (1) In all cases the District Judge or District Delegate may, if he thinks proper :-

... ..

(c) issue citations calling upon all the persons claiming to have any interest in the Estate of the deceased to come and see the proceedings before the grant of probate or letters of administration."

The controversy between the learned counsel for the parties was with regard to the interpretation of the words "claiming to have any interest in the Estate of the deceased" used in the clause aforesaid. According to the learned counsel for the petitioner a person having any interest however slight and even a bare possibility of interest is sufficient to entitle a person to enter caveat whereas, according to the learned counsel for the opposite party only such person has right to enter caveat who claims interest in the estate of the deceased at the relevant time which according to the learned counsel is the date of death of the testator.

7. At this stage, I will refer to a Single Judge decision of this court in *Mutukdhari Singh v. Sm. Prem Devi*² upon which both parties placed reliance. This decision has taken notice of various decisions of the other High Courts including previous decisions of the Patna High Court. In that case a step-sister of the deceased testator applied for revocation of the probate of the will. It appears that her identity as step- sister of the deceased testator was challenged but it was found on evidence that she was actually the step-sister of the deceased testator. The main question which was canvassed in that case was as to whether the step-sister of the testator had right to apply for revocation of the letters of administration granted to the appellant of that case without citing the step- sister as a party in that letters of administration case. After discussing various authorities on that point the learned Judge held that the said step- sister had an interest in the estate of the deceased as contemplated by Section 283 (1) (c) of the Succession Act which entitled her to apply for revocation of the grant and to call upon the appellant of that case, the propounder of the will to prove the same in solemn form in her presence. It is not necessary to discuss several authorities which have been discussed in Mutukdhari's case (supra) as learned counsel for both sides relied upon different paragraphs in Mutukdhari's case where these decisions have been discussed. I may state here that neither party challenged the aforesaid decision in Mutukdhari's case, rather they relied upon the principle laid down in that case. Reference was made by Mr. Prasad to para. 38 of the judgment in Mutukdhari's case wherein the case of *Priya Nath Bhattacharji v. Saila Bala Debi*³ a Bench decision of this court has been discussed. The principle that has been laid down in that case is :

"It is, however, well established now that any interest, however slight, and even the bare possibility of an interest, is sufficient to entitle a party to oppose

²(1959 BLJR 281)

³ (11 Pat LT 343)

a testamentary paper. It has been held in several decisions that although a reversioner under the Hindu Law has no present alienable interest in the property left by the deceased still he has substantial interest in the protection or devolution of the estate, and as such is entitled to appear and be heard in a probate proceeding."

The principle that the possibility of feeling a character which would give the party concerned an interest was not sufficient, but that there must be a possibility of having an interest in the result of

setting aside the will has not been deputed. Thus it appears clear that a bare possibility of an interest which rests on the existing facts and not on mere conjecture gives a person right to enter caveat.

8. Learned counsel for the petitioner referred to the case of *Haripada Saha v. Ganashyam Saha*⁴ but that decision also lays down the same principle namely that "any interest, however, slight and even a bare possibility of an interest is sufficient to entitle a person to enter caveat in a probate proceeding.

9. Mr. Jha in support of his contention noted above strongly relied upon a Bench decision of this Court in *Kashi Nath Singh v. Gulzari Kuer*⁵ but in my opinion the principle laid down in that case has no application to the present case. There it has been held that a person who claims outside and independently of a will or claims adversely to the testator and disputes his right to deal with the property, can in no sense be deemed to claim an interest in the estate of the deceased within the meaning of Section 283. The proposition, in my opinion, that a person who claims adversely to the testator and disputes letter's right to deal with the property, has no right or *locus standi* to enter caveat and such person would not be deemed to claim an interest in the estate of the deceased in a letters of administration case has no application to the present case. Thus, in my opinion, this case does not at all help the contention of Mr. Jha.

10. Keeping in my mind the aforesaid principle laid down in different cases discussed above let me examine as to whether in the present case it can be said that the petitioner has any right to enter caveat. I have already given in detail the claim of the petitioner. He has actually claimed interest in the whole property under the will executed by Inder Kuer. It is also not in dispute at the Bar that in Anurago Kuer the testator would have died intestate then the property would have come to Inder Kuer as the co-widow by the right of survivorship and the latter would have become entitled to the whole of the property. If that be so, it cannot be disputed that the said Inder Kuer could make a will with regard to the whole property, in favour of the petitioner who is her sister's sons. It is stated at the Bar and which fact is not disputed that the petitioner has already applied for grant of a probate of the will executed by Inder Kuer in his favour which is pending in the court of the District Judge, Muzaffarpur in probate case No. 23 of 1973. Inder Kuer, in fact entered caveat in the probate case filed by the opposite party, but unfortunately she died during the pendency of that case. In the facts and circumstances discussed above, therefore, it is clear that the petitioner is certainly interested to safeguard his interest which he has got under the

⁴(1945) 49 CWN 713)

⁵(AIR 1941 Pat 475)

will which has given rise to probate case No. 23 of 1973 and which is pending. It cannot, therefore, by any stretch of imagination be said that the petitioner has no interest which gives sufficient right to the petitioner. The petitioner has right to enter caveat in the present probate case filed by the opposite party. The court below therefore acted illegally and with material irregularity in the exercise of its jurisdiction in holding that the petitioner has no *locus standi* to oppose the grant of probate or the letters of the will executed by Anurago Kuer. It is further held that the impugned order if allowed to stand would cause irreparable injury to the petitioner.

11. In the result, the application is allowed, the impugned order is set aside but in the

circumstances of the case, I would make no order as to costs. The court below is now directed to dispose of the probate case in accordance with law.
Application allowed.