

(2014) 04 JH CK 0046**Jharkhand High Court****Case No:** M.A. Nos. 7 and 18 of 2010

Sadhna Sinha

APPELLANT

Vs

Dipesh Sinha

RESPONDENT

Date of Decision: April 1, 2014**Citation:** (2014) 2 JLJR 441**Hon'ble Judges:** Dhrub Narayan Upadhyay, J**Bench:** Single Bench**Advocate:** P.A.S. Pati and Mr. Rohit Roy, Advocate for the Appellant; Ananda Sen for Respondent No. 1, Arpan Mishra, Raunak Sahay and Ajay Kumar Singh for the Respondent Nos. 2, 3, 4 and 5, Advocate for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Dhrub Narayan Upadhyay, J.

M.A. No. 7 of 2010

1. This Miscellaneous Appeal has been preferred by the appellants, namely, Smt. Sadhna Sinha, Anshuman Sinha and Anupam Sinha, who happens to be legal heirs and representatives of original applicant late Chandidas Sinha, against the order dated 21.10.2009 passed by Additional District Judge, F.T.C.-VI, Jamshedpur in connection with Title suit No. 3 of 2007. The facts in brief is that testator late Ratikanta Sinha created a Will dated 3.4.1992 in favour of his wife Abha Rani Sinha and four sons, namely, Chandidas Sinha, Suprakash Sinha, Sukumar Sinha and Ashish Kumar Sinha in respect of scheduled property mentioned at the foot of the application filed in the court below. Late Ratikanta Sinha died on 2.1.1997. Whereafter an application vide L.A. Case No. 116 of 2002 was filed in the Court of learned District Judge, Singhbhum East, Jamshedpur by one of the legatees Chandidas Sinha. In the body of the application names of legal heirs of Ratikanta Sinha were disclosed including names of the legatees. During pendency of that

application Deepesh Sinha, one of the son of late Ratikanta Sinha raised objection against grant of Letters of Administration in favour of applicant Chandidas Sinha, whereafter L.A. Case No. 116 of 2002 was converted into Title Suit No. 3 of 2007. Chandidas Sinha died on 25.4.2009, whereafter these appellants filed a petition to substitute them as plaintiffs, but the prayer was rejected vide impugned order dated 21.10.2009 and hence this appeal.

2. It is submitted that if the appellants were not allowed to be substituted, the last wish of the testator by which he had bequeathed his property in favour of legatees cannot be given effect and they have relied on the judgment reported in Shambhu Prasad Agarwal and Others vs. Bhola Ram Agarwal, (2000) 9 SCC 714 .

3. Learned counsel, appearing for respondent No. 1, has submitted that the learned Additional District Judge has rightly refused to substitute the appellants in the suit. There are other legatees who can file separate petition for grant of Letters of Administration against the said Will created by late Ratikanta Sinha. Since late Chandidas Sinha had not acquired any right in the property, these appellants have no inheritable right and they are not entitled to be substituted, it is also pointed out that the judgment on which the appellants are relying upon is having distinguished fact which is not available in the present case. In that very case there was only one legatee and therefore, substitution petition was allowed.

4. I have gone through the impugned order, material placed before me as well as the judgment cited above. It is apparent, if any of the legatee will be permitted either to" proceed with the suit for grant of Letters of Administration or to file separate application, in both the situations, the interest of legatee Chandidas Sinha is to be protected and for that his legal heirs are the persons who after being substituted can proceed with the case to put their stand. Para-5 of the judgment of Shambhu Prasad Agarwal (supra) is quoted hereunder:--

5. We find that it is not disputed that Matadin Agarwal was a legatee under the Will, it is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate. However, this did not debar his heirs to get the probate petition amended. The trial court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the Will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration. Since considerable time has elapsed, we feel that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground.

In view of the finding of the Apex Court and also taking into consideration that interest of these appellants cannot be ignored and therefore. I feel inclined to allow this appeal and the appellants are directed to be substituted as plaintiffs in Title Suit No. 3 of 2007 and to proceed further in accordance with law and the impugned order to this extent stands set aside.

M.A. No. 18 of 2010

Learned counsel for the appellant in M.A. No. 18 of 2010 submits that he may be permitted to withdraw this appeal in view of the order passed in M.A. No. 7 of 2010 and he may be allowed to remain defendant in Title Suit No. 3 of 2007 to put his stand.

In view of the submission, M.A. No. 18 of 2010 stands dismissed as withdrawn with liberty as aforesaid.