

IN THE HIGH COURT OF JUDICATURE AT PATNA

Manoj Kumar Yadav & Anr

vs.

Sudhir Kumar Yadav & Ors

FIRST APPEAL No.134 of 2018

08 September 2025

(Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether, in a pending appeal against the grant of probate of a will, the court has the jurisdiction to pass an interim order to protect the properties bequeathed under the said will from being alienated by the beneficiary during the pendency of the appeal. [Paras 2, 4, 8]

Headnotes

Probate Jurisdiction – Interim Protection of Bequeathed Property – A probate court, including an appellate court hearing an appeal from a probate decree, possesses the inherent jurisdiction to pass interim orders for the protection of the subject matter of the testamentary disposition. This power is essential to prevent the alienation of the property, which could render the final outcome of the appeal infructuous. The court is not powerless to prevent an imminent threat of a material change in the existing condition of the property under dispute. [Paras 3, 8, 9]

Grant of Probate vs. Title – The grant of probate is decisive only of the genuineness and validity of the will itself and does not confer title to the property. Title must be established independently. However, this principle does not preclude the court from taking interim measures to preserve the property in question until the validity of the instrument (the will) that purports to transfer it is finally adjudicated. [Paras 5, 8]

Status Quo Order – Contested Probate Proceedings – In a contested probate matter where the validity of the will is under challenge, it is just and proper for the court to direct the parties to maintain the status quo regarding the

bequeathed properties. This ensures that the estate of the deceased testator is not destroyed, dissipated, or frittered away during the pendency of the litigation, thereby protecting the rights of all contending parties. [Paras 3, 8, 9]

Case Law Cited

Amrendra Dhawaj Singh & Anr Vs Prem Kumar Singh, **2013(1) PLJR 853**; Delhi Development Authority Vs. Vijaya C. Gurshaney (Mrs) and another, **(2003) 7 SCC 301**; Vikas Singh & Ors. Vs. Devesh Pratap Singh, **2001 (2) PLJR 184**; Rajnibai (Smt) @ Mannubai vs. Kamla Devi (Smt) and Others, **(1996) 2 SCC 225**

List of Acts

Indian Succession Act, 1925 ; Code of Civil Procedure, 1908

List of Keywords

Probate Jurisdiction; Interim Injunction; Status Quo; Alienation of Property; Bequeathed Property; Testamentary Disposition; Grant of Probate; Title vs. Probate; Protection of Property; Inherent Powers (S. 151 CPC)

Case Arising From

Interlocutory Application (I.A. No. 1 of 2022) filed in First Appeal No.134 of 2018, which itself arises from the judgment and decree in a probate case (converted to Title Suit No. 01 of 2014).

Appearances for Parties

For the Appellant/s: Mr. Satish Kumar, Advocate.

For the Respondent/s: Mr. Shashi Shekhar Dwivedi, Sr. Advocate; Mr. Amar Nath Jha, Advocate.

Headnotes Prepared by Reporter: - Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.134 of 2018
In
Miscellaneous Appeal No.259 of 2017

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Manoj Kumar Yadav and Anr

... .. Appellant/s

Versus

Sudhir Kumar Yadav and Ors

... .. Respondent/s

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Appearance :
For the Appellant/s : Mr. Satish Kumar, Adv.
For the Respondent/s : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
: Mr. Amar Nath Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

10 08-09-2025

I.A. No. 1 of 2022

The instant interlocutory application has been filed by the appellants with a prayer to protect the property in respect of which the will in question was executed by restraining the respondents from dispossessing the appellants.

2. Mr. Satish Kumar, learned counsel for the appellants submits that the appellants and the respondent no. 1 are real brothers and their mother late Subhdra Devi executed a will dated 31.8.2012 in favour of respondent no. 1, who filed Probate Case no. 09 of 2013 which was later converted into Title Suit No. 01 of 2014 when the same was contested by the appellants. The appellants appeared before the trial court with the objection that the purported will was forged and fabricated and most of the properties shown in the will did not belong to testatrix. In fact, a Partition Suit No. 146



of 1972, in between the parties regarding a portion of the land, ended in a compromise. In the will the testatrix included 1 acre 70 decimals of land covered under the compromise decree passed in Title Suit No. 146 of 1972, which had been allotted to the appellants' father. Respondent no. 1 succeeded in getting the probate and taking advantage of the same started negotiating with land *mafia* and anti social elements for the sale of the property covered under the will. During the pendency of this appeal, respondent no. 1 has transferred 11 dhur homestead land out of old Khata No. 88 K, new khata No. 86, old plot no. 571, new plot no. 351 and 349, situated in Mauza-Madanpur (Ward No. 14) of Nagar Parishad area P.S Anchal and District Madhepura, through a registered sale deed dated 8.11.2024 in favour of one Akhilesh Rai which clearly shows that the respondent no. 1 is actively disposing of the properties covered under the will in question.

3. Learned counsel for the appellants further submits that although the instant matter relates to the Probate, but all the properties regarding which the will in question was executed must be protected when there is credible documentary evidence clearly indicating their potential alienation. In support of this submission, learned counsel has placed reliance upon the decision of this Court passed in the case of **Amrendra Dhvaj Singh & Anr Vs Prem**



Kumar Singh, reported in **2013(1) PLJR 853**, relevant paragraph nos. 18 & 19 of the aforesaid judgement upon which reliance has been placed, are being reproduced as under:-

“18. From the aforementioned pronouncements of law, it is discernible that a probate Court has the jurisdiction to pass necessary orders for the protection of the subject mater of the testamentary disposition and it cannot be unresponsive to the imminent threat of material change in the existing condition of the property under the will in question.

19. For these premised reasons, it appears just and proper, in order to protect the estate of the deceased testator from being destroyed, dissipated or frittered away, that both the appellants P13 / 13 and respondents be directed to maintain status quo as existing today with regard to the property of the deceased testator Late Bishun Prakash Narayan Singh during the pendency of this appeal. Accordingly it is so ordered. The interlocutory application is, thus disposed of.”

4. On the other hand, Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing for the respondent no.1 has vehemently opposed the prayer of the appellants and submitted that in this appeal, only the genuineness of the will in question and the correctness of the judgment impugned are only under consideration and issues regarding title and possession of the land relating to the will can not be adjudicated by this Court and admittedly the appellants had earlier filed an injunction petition in Title Suit No. 25 of 2017, which was rejected and no Miscellaneous Appeal was



preferred thereafter. By way of this application they (appellants) want the disputed question of possession as well as title of the properties relating to the will to be decided from this court, which is completely beyond the jurisdiction of this Court, in this appeal.

5. In support of above contentions learned senior counsel has placed reliance upon the judgment of Hon'ble **Apex Court** passed in the case of **Delhi Development Authority Vs. Vijaya C. Gurshaney (Mrs) and another**, reported in **(2003) 7 SCC 301**, relevant paragraph no.8 of the aforesaid judgment reads as under:-

“8. In this case the alleged will was executed on 26-10-1977. Ram Dhan died on 18-9-1978. Letters of administration were granted on 7-5-1980. Admittedly, the respondent is not related to the deceased Ram Dhan. The High Court clearly erred in holding that merely because letters of administration are granted the appellants cannot inquire into the true nature of the transaction. It is settled law that a testamentary court, whilst granting probate or letters of administration does not even consider particularly in uncontested matters, the motive behind execution of a testamentary instrument. A testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. It is settled law that the grant of a probate or letters of administration does not confer title to property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though probate or letters of administration have been granted.”

6. Learned senior counsel has further placed reliance upon the judgment of this Court passed in the case of **Vikas Singh**



& Ors. Vs. Devesh Pratap Singh, reported in **2001 (2) PLJR 184**, paragraph nos. 6 & 7 of the said judgment upon which reliance has been placed are reproduced as under:-

*“6. Whether a person was incapable of executing a Will by reason of any physical and/or mental incapacity is certainly a relevant point and, in fact, the most relevant point which is to be decided in Probate/Letters of Administration proceedings and in this case also, I would deal with this aspect later in this Judgment. As regards the use of the words "his property", it is clear and, if I may say so, implicit that a person can execute a Will like any transfer-deed, only with respect to his own property and not someone else's property and, therefore, nothing much turns on use of those words in [Section 59](#) as to confer jurisdiction on the probate Court to decide any dispute relating to title, ownership, etc. of the testator/testatrix in the property which is the subject-matter of the Will. It is settled legal position that it is not the duty of the probate Court to consider any issue as to title of the testator to the property with which the Will propounded purports to deal or to the disposing power the testator may have possessed over such property or as to the validity of the bequeaths made. See, for example, the case of *Kashi Nath v. Dulhin* AIR 1941 Patna 475. Proceedings for grant of Probate or Letters of Administration is not suit in the real sense, it only takes the "form" of a regular suit according to the provisions [of the Code of Civil Procedure](#), "as early as may be" vide [Section 295](#) of the Act. Reference may be made to a Division Bench decision of this Court in [Sidhnath Bharti v. Jai Narayan Bharti](#) 1994 (1) PLJR 644, a Full Bench decision of the Allahabad High Court in [Panzy Ferondes v. M.F. Queoros](#) and a Division Bench decision of the Calcutta High Court in [Batai Lall Banerjee v. Debaki Kumar Ganguly](#). The grant of Probate or Letters of Administration is decisive only of the Will propounded and not of the title, etc. of the testator to the property. As the issues relating to title, ownership etc. are not to be gone into in such proceedings, it follows that even a favourable in favour of the petitioner/plaintiff granting Probate or Letters of Administration in his favour does*



not operate as resjudicata in any future suit which the Objector is at liberty to bring seeking declaration of his right, title, interest, etc. in the property. In the above premises the objection of the objector as to disposing capacity, i.e., ownership of the testatrix is rejected.

7. The objection that the document in question containing the impugned disposition is not a Will but merely a wish or desire of the testatrix to given the property to the petitioners in future seems to have been taken, if I may say so, for the sake of objection. A bare perusal of the contents of the disposition, the original of which is on the record as Ext. 1 and photo copy is Annexure-1 to the petition, does not bear this out. The disposition is captioned in clear words as "Wasiyatnama (Will)", and the recitals thereof also leave no room for doubt that testatrix intended to give the property to the petitioners as a bequeath after her death. Translated into English (by me), the recitals are as under:

Will dated 28.8.86 It is my desire that I give my house which is known as Kamla Niwas and which stands on Boring Canal Road, Patna, and along with house Kamla Niwas the land and the entire compound to my grand sons Vikas Singh and Vivek Singh, who are sons of my elder son Suresh Pratap Singh after my life, and the said grand sons will have the right. They will become its full owners and after my death, they will get the house and the land recorded in their names in the government offices and in the municipality and keep the same in their possession. Let it be understood that they will not sell the property."

7. Heard both the sides and perused the impugned judgement.

8. The instant matter relates to a will dated 31.08.2012 which is claimed to have been executed by the Late Subhadra Devi in favour of respondent No.1, who was the mother of the appellants



and the respondent No.1, who contested the Probate Suit before the trial court and also contesting this appeal. Generally, one of the purposes of the testator/ testatrix to execute a will is the distribution of testator/ testatrix's assets and thereof management after his/ her death. Though, in a Probate case the validity and genuineness of the will in question is decided, however, in a contested probate matter the trial court as well as the appellate court can take interim measures such as order of injunction to protect the bequeathed property of the testator/ testatrix in respect of which the will has been executed because to prevent one from alienation is crucial as it avoids creating a third party interest or change in the existence of the bequeathed property. If during the pendency of the probate proceeding (suit or appeal) one of the parties is permitted to dispose of the testator's property regarding which the testator/ testatrix has executed his/ her will then after final decision of the court regarding the validity of the will such transfer/ disposal of the property can frustrate the will's purpose. In my opinion, in a contested probate matter an order of interim injunction can be passed to protect the property of the testator/ testatrix from being alienated or dealt with in a way that would cause irreversible damage to any of the parties of the will before deciding the authenticity of the will. If a will is declared valid then the estate of



the testator/ testatrix is distributed/ managed as per the will but if the will in question is not declared valid then the properties mentioned in the will, will be distributed or managed as per the prevailing succession laws. In the instant matter, the appellants and the respondent No.1 are real brothers and the appellants have taken the plea in the instant application that most of the properties shown in the will did not belong to the testatrix and a partition suit in between the parties had run which was decided on the basis of compromise but the testatrix included one acre and 17 decimals of land covered under the compromise decree in her will while the said land had been allotted to the appellants' father as per the compromise decree. It is an admitted position that respondent No.1 has transferred a part of the estate of the testatrix by a registered sale deed during the pendency of this appeal which has not been denied by the respondent No. 1. The validity of the will of the testatrix as declared by the trial court by the impugned judgement has not attained finality as the appeal having arisen out of the impugned judgement is still pending. The Hon'ble Apex Court in the case of **Rajnibai (Smt) @ Mannubai vs. Kamla Devi (Smt) and Others** reported in **(1996) 2 SCC 225** observed as follows:-

“Merely because there is no dispute as regards the corporeal right to the property, it does not necessarily follow that he is not entitled to avail of the remedy under Order 39, Rule 1 and 2 CPC. Even otherwise also, it is



settled law that under Section 151 CPC, the Court has got inherent power to protect the rights of the parties pending the suit.”

9. Accordingly, for the aforesaid reasons, I am of the view that the appellants are entitled to the relief which they have prayed for. As such, the respondent No.1 is directed to maintain status quo as existing today with regard to the bequeathed properties of the deceased testatrix during the pendency of this appeal and the remaining bequeathed properties of the deceased detailed in the will in question shall not be alienated or transferred during the pendency of this appeal by any of the parties.

10. I.A. No. 01 of 2022 stands disposed of.

11. List this appeal for hearing on its turn.

(Shailendra Singh, J)

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