

5. It is submitted by learned counsel for the respondent-original probate applicant that the instant appeal is not maintainable as the appellant was not even a party before the Probate Court. The said WILL was registered on

16.10.1998 and the registered document carries a presumption of genuineness and the said presumption has not been rebutted.

6. So far the testamentary capacity to dispose of the property is concerned, the title of the property cannot be looked into in a probate case for which a separate suit has already been filed vide Original Title Suit No. 54/2021. It is contended that since the appellant did not come from the line of Shiv Nandan Sao and the relationship has been denied, therefore, she was not impleaded in the case. However, citation was issued to the public at large, but no objection was raised from any quarter.
7. None appeared before this Court on behalf of the public to contest the probate case, or to state that the Dewanti Devi was also the heir and descendant of Shiv Nandan Sao. Attesting WILL has been duly proved and one of the attesting witnesses as per requirement under Section 63 of the Indian Succession Act read with Section 68 of the Evidence Act has already proved the WILL.
8. Having considered the submissions advanced on behalf of both sides, there cannot be quarrel with the legal proposition that hearing in probate cases are summary in nature and confined to adjudication, if the WILL was the last WILL of the testator executed in a free and disposing state of mind. Whether the testator had title over the property for which the WILL was executed is beyond the zone of consideration by a Probate Court. The title can be determined in a suit duly filed before a Civil Court.
9. The genealogy, as asserted by the appellant at this stage, has been denied and admittedly, the appellant was not a party before the learned Trial Court. The WILL was the registered WILL and has been duly proved before the learned Probate Court. If the appellant had a right over the property of Shiv Nandan Sao and that is established in the suit, it goes without saying that the testamentary disposition of property made by Ganga Devi will be confined to the rights she had over such property.

Under the circumstance, I do not find any merit to interfere with the impugned judgment.

Miscellaneous Appeal stands dismissed with cost.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)