

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.840 of 2006

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1. Malkom Waleski
 2. Audrey Waleski @ Ardrew Walesky
 3. Barry Waleski
 4. Era Waleski

All sons of H.C. Waleski, resident of Mohalla Larkanir, P.S. & Dist- Katihar
(Objectors-Defendants)

.... Petitioners

Versus

1. Barbra Reberio @ Barbra Raberio, D/o George Rebeiro, Resident of Maganga Kothi, P.S. Kajanchihat, Dist- Purnia (Applicant-Plaintiff)

.... 1st Party—Opposite Party

- 2(I) Most. Saraswati Devi- Wife
- (II) Rana Manoj Singh- Son
- (III) Smt. Poonam Singh--Daughter
- (IV) Smt. Nitu Singh Daughter
- (V) Smt. Ritu Singh -- Daughter

Residents of Mohalla- Gami Tola, P.S. & District- Katihar

2nd Party—Opposite Party

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Appearance :

For the Petitioners :	Mr. Kanti Jha, Adv.
	Mr. Akhileshwar Kumar, Adv.
	Mr. Navin Kumar, Adv.
	Mr. Madhav Roy, Adv.
For the Respondents :	Mr. Rama Nand Poddar, Adv.
	Mr. Ravindra Kr.Choudhary, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 13-03-2015

The defendants in T.S. No. 1/88/3/85, on the file of the District Judge, Katihar are the petitioners. They filed this revision, feeling aggrieved by the order dated 1.4.2006, passed by the trial court. The facts in brief are as under:

The 1st respondent herein, by name Barbra Reberio, daughter of George Rebeiro, filed Probate Case



No.3/85 with a prayer to grant a letter of administration in respect of ancestral property, in her favour. The petitioners contested the claim. As required under Section-272 of the Indian Succession Act, read with Rule 458 of the Civil Court Rules of Patna High Court, the probate case was numbered as the Title Suit.

In their written statement, the petitioners herein pleaded several facts, including the one that the Will dated 31.1.1964, relied upon by the respondents, is not the last one, and that no relief can be granted to the 1st respondent. After some progress in the suit, the 1st respondent is said to have filed a petition on 15.12.2001, with a prayer to permit her to withdraw the suit. At this stage, the 2nd respondent Rana Rajendra Singh, son of Jagat Narayan Singh, filed an application stating that he is the general power of attorney of the 1st respondent, i.e. the original plaintiff, and apart from that he has also an agreement in his favour in respect of the property. The petitioners objected to the step taken by the 2nd respondent and pleaded that once the original plaintiff wanted to withdraw, the 2nd respondent cannot come into picture at all.

The matter underwent several adjournments. Ultimately, the trial court passed an order dated 1.4.2006,

directing that evidence be adduced by the 2nd respondent. Hence, this revision application.

Heard learned counsel for the petitioners and learned counsel for the respondents.

An original petition was filed by the 1st respondent for letters of administration. It was on account of the resistance offered by the petitioners that the same came to be treated as suit. Once the 1st respondent wanted to withdraw the suit, the trial court was under obligation to deal with the same, as provided under Order-23 of C.P.C. Any further steps in the case can be taken only after dealing with the application filed for withdrawal of the suit. Therefore, we find no justification for the trial court in proceeding with the application filed by the 2nd respondent, and in permitting him to continue the suit. Therefore, the revision is allowed and the order dated 1.4.2006 is set aside.

The trial court is directed to pass orders in the application filed by the 1st respondent, i.e. the original plaintiff, seeking withdrawal of the suit, before it takes any further steps in the suit. The entire exercise shall be completed within two months from the date of the order. It is also made clear that if the original plaintiff does not pursue the application under suit, the trial court shall take

necessary steps, as provided for under the law.

Interlocutory application, if any, stands disposed

of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

K.C.jha/-
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