

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.243 of 2012

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Vijendra Kumar

.... Petitioner/s

Versus

Pramod Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

14 30-10-2015 1. Heard the learned counsel, Mr. Ashok Kumar, for the petitioner, the learned counsel, Mr. Najmul Hoda for the respondent No.1, 2, 3 and Mr. Sunil Kumar Pandey on behalf of respondent No.4 series.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 20.04.2007 passed by the learned Addl. Munsif VIII, Muzaffarpur in Title Suit No.178 of 2001 whereby the Court below rejected the application filed by the petitioner for being added / substituted in place of the deceased sole plaintiff of the suit.

3. It appears that the original plaintiff Ram Das Chaudhary had filed the aforesaid suit for declaration that the khatiyani entry in the name of the defendant of the suit is wrong and during the pendency of the suit, the original plaintiff died and in his place his



widow was substituted. The widow also died during the pendency of the suit. The present petitioner filed application for being substituted in place of the plaintiff on the ground that the sole deceased plaintiff had already executed a Will in favour of him. The other person, i.e., respondent No.1, 2, 3 also filed application for being substituted in place of the deceased sole plaintiff on the ground that they are the own brother and nephew of the original plaintiff. The Court below substituted the brother, nephew of the plaintiff whereas rejected the application filed by the present petitioner on the ground that the subject matter of the suit is not covered under Will and that the application filed by the petitioner is barred by limitation. The property is not covered and the Will is not probated.

4. The learned counsel, Mr. Ashok Kumar, for the petitioner submitted that although the petitioner was praying for being substituted as plaintiff, the petitioner will be satisfied if he is added as party defendant in the suit because the other respondents are disputing the Will to have been executed by the original plaintiff. According to the learned counsel, all the properties were bequeathed by the original plaintiff in favour of the present petitioner but the Court below wrongly observed that the property in the suit is not covered in the Will without considering the fact



that the plot number and khata number mentioned in the Will is of C.S. record whereas in the suit, the revisional survey plot number and khata number have been given. The learned counsel further submitted that the preset petitioner has already filed a probate case being probate application No.25 of 2006 which is pending wherein the present respondents are party. According to the learned counsel, even if the Will is not probated then also he is entitled for being substituted in place of the deceased plaintiff.

5. On the other hand, the learned counsels appearing on behalf of the respondent submitted that in fact the father of the present petitioner was the karpardaz of the deceased plaintiff and he has already adduced evidence but nowhere he has disclosed that any Will was executed in favour of the petitioner by the original plaintiff. The learned counsels further submitted that in fact the suit plot is not covered under the Will and that is the finding of the Court below also. The learned counsel further submitted that in view of the above finding of fact property covered under Will is different property than the property involved in the suit. In such circumstances the High Court in exercise of jurisdiction under Article 227 of the Constitution of India cannot interfere with the finding of fact arrived at by the Court below on the basis of the Will which is Annexure '1' to the

writ application.

6. Perused the order passed by the Court below.

7. The learned counsel for the petitioner is unable to satisfy this Court that in fact the Court below has arrived at a wrong finding to the fact that the suit property is not mentioned in the Will. From perusal of the Will Annexure '1', also it is apparent that the description of all the properties bequeathed by the deceased sole plaintiff has been mentioned but according to the finding of the Court below, the suit property is not included therein. In such view of the matter when the property in the suit is not bequeathed in favour of the petitioner, he is not entitled to be added or substituted in place of deceased sole plaintiff as he is not a necessary or proper party. Accordingly, I do not find any reason to interfere with the impugned order.

8. **In the result, this writ application is dismissed.**

(Mungeshwar Sahoo, J)

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