

IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.1 of 2014

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In The Goods of Late Smt. Usha Majumdar, Patna
..... Petitioner/s

Versus

Xxxxxx
..... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Subhdeep Das
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL ORDER

9. 22-01-2015 **Interlocutory Application Nos.**

5402/2014 & 5401/2014

By filing Interlocutory Application No. 5402/2014 by N.R. 1 who filed caveat and simultaneously objection supported with duly affidavit both on 28th July 2014.

The two Interlocutory Applications are being filed by learned counsel for the petitioner on the ground that in the light of Rule 18 and 20 of Chapter XI of Patna High Court Rules. In the eye of law, no caveat can be entertained. Since, it is second one and first one filed vide Interlocutory Application no. 4169/2014 died its natural death.

Learned counsel for the petitioner placed reliance upon a decision of this Court in **1994(1) PLJR 636**. As it appears from the record that by filing Interlocutory Application No. 4169/2014



prayer was made on behalf of the N.R. No. 2 that “to grant leave to file the caveat **or** accept this petition as caveat and grant leave to contest the suit”. It appears that on going through the materials the Bench presiding over vide order dated 24th July 2014, permitted to N.R. No. 1 to file caveat “in the prescribed format within a week and objection with affidavit within prescribed period”.

It further appears that through Interlocutory Application, N.R.No. 1 made alternative prayers and first prayer was accepted by the Bench who permitted to file caveat within a week, which was duly done by filing Interlocutory Application on 28th July 2014. Of course, some more time was available to N.R. No. 1 to file objection with affidavit but that too has been done simultaneously by filing another Interlocutory Application on same day.

Taking into consideration, the facts and circumstances, as stated above, leaves no room for any objection to entertain the caveat and the decision placed and relied upon by learned counsel for the plaintiff is altogether on different footing, hence, not at all applicable in the present case.

Accordingly, objection made on behalf of the plaintiff against entertaining the two

Interlocutory Applications is not acceptable. Let this matter be converted into a suit, since issuance of probate is highly contested. Both the sides are directed to file proposed issues, documents and list of witnesses.

Put up this case for further needfuls after three weeks.

Rajeev/-

(Akhilesh Chandra, J.)

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