

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2015

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Smt. Sunita Singh

.... Petitioner/s

Versus

Shambhu Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shree Niwas Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

4 27-11-2015 **1.** Heard the learned counsel, Mr. Shree Niwas Singh, for
the plaintiff petitioner.

2. This application under Article 227 of the Constitution of
India has been filed by the plaintiff petitioner challenging the
order dated 16.08.2014 passed by the Ad. hoc A.D.J. IV Patna in
Title Suit No.5 of 2004/ probate case No.28/01.

3. It appears that the plaintiff petitioner filed the probate
case No.28 of 2001 for grant of probate with respect to the
registered Will. The defendant filed contesting written statement.
Considering the fact that the defendants are contesting the matter
in view of provision as contained in Section 295 of the Indian
Succession Act, the learned Court below converted the probate
case to a title suit being title suit No.5 of 2004.



4. Subsequently, the plaintiff petitioner filed an application for withdrawal of the title suit. However, at the time of hearing of the said interlocutory application filed by the petition under Order 23 Rule 1, the learned counsel submitted that he is not pressing the application for withdrawal, as such by the impugned order rejected the said application and directed that the suit should proceed. The defendant then filed application to the effect that he may be permitted to contest. By the impugned order, the same had been allowed by the Court below.

5. The learned counsel for the petitioner submitted that the defendant have already been debarred earlier from contesting the matter and, therefore the Court below has wrongly allowed them to contest. Since they have been debarred to contest the suit, the Court below should be directed to proceed to decide the probate case as not contested.

6. From perusal of the impugned order, it appears that the facts which are being raised by the learned counsel for the petitioner is not apparent from the record. The petitioner never raised the question that they have already been debarred from contesting the probate case or the title suit. The Court below only has allowed application filed by the defendant respondent.

7. The Hon'ble Supreme Court in the case of *Jai Singh and others vs. Municipal Corporation of Delhi and another* 2010 (9) SCC 385, has held that 'the exercise of jurisdiction under Article 227 of the Constitution of India must be within the well-recognized constraints. It cannot be exercised like a "bull in China shop", to correct all errors of Judgment of a Court, or tribunals, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or flagrant abuse of fundamental principles of law or justice.'

8. Accordingly, I find no merit in this application in exercise of jurisdiction under Article 227 of the Constitution of India, the impugned order cannot be interfered with. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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