

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.827 of 2012

- =====
1. Ramswaroop Chaudhary Son Of Late Nathun Chaydhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
 2. Smt. Tara Chaudhary Wife Of Ramswaroop Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad

.... Appellant/s

Versus

1. Estate Of Late Nathun Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
2. Most. Radhika Kuer Daughter-In-Law Of Late Nathun Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
3. Chandan Chaudhary Son Of Late Hiralal Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
4. Madhu Chaudhary S/O Late Hiralal Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
5. Soni Chaudhary D/O Late Hiralal Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
6. Moni Chaudhary D/O Late Hiralal Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad
7. Manju Chaudhary D/O Late Hiralal Chaudhary Resident Of Village- Lahas, P.S. Rafiganj, District Aurangabad

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Manoj Kumar Pandey, Advocate.
For the Respondent/s : Mr. Pankaj, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 24-08-2015

Heard the parties.

2. In the present appeal the appellants are challenging the judgment and order dated 25.9.2012 passed by the District Judge, Aurangabad in Probate Case No.33 of 2010 by which he has dismissed the aforesaid case on the ground of non-joinder and mis-joinder of the parties.

3. The appellants have filed a probate case claiming that late Nathu Choudhary had executed the Will in favour of the appellants. From the genealogical table it appears that Nathu choudhary, son of Bishundhari Choudhary had two sons, namely, Hira Lal Choudhary and Ram Swaroop Choudhary. Hira Lal Choudhary died leaving behind two sons and his widow, namely, Chandan Choudhary, Madhu Choudhary and Most. Radhika kuer. He had also three daughters, namely, Soni Choudhary, Moni Choudhary and Manju Choudhary. The wife of Nathu Choudhary also died. As has been claimed by Ram Swaroop Choudhary, he was looking after Nathu Choudhary and his wife to their satisfaction and giving all possible comforts and as such both were highly impressed and obliged by their conduct, executed the Will in their favour, accordingly the property became exclusive and personal property after the death of his father, namely, Nathu Choudhary. It has been claimed that Nathu Choudhary along with Satyendra Choudhary, Janki Choudhary of Village Lahab and Banauli came to the deed writer, namely Mithlesh Kumar at Aurangabad and gave him necessary instruction to prepare the draft. The Will was drafted in their favour with regard to 3.80 Acres of land. The Will was prepared and he executed the Will in presence of attesting



witnesses. It has further been claimed that in 2004 the petitioner Ram Swaroop Choudhary became seriously ill. Nathu Choudhary has no money for the treatment so he sold 19 Kathas 8 Dhurs of land out of plot nos. 34, 24 and 26 Kathas out of Khata No.14. The appellant in support of execution of Will examined witnesses, namely, Ram Swaroop Choudhary (A.W.1), Smt. Tara Devi (A.W.2), Mithilesh Kumar (A.W.3), Satyendra Choudhary (A.W.4) and Janki Choudhary (A.W.5).

4. The court below has dismissed the application on the ground of non impleadment of necessary party.

5. Learned counsel for the appellants submits that in paragraph 15 of the plaint he has impleaded nearest relatives party who would be affected by the out come of the Will. The ground for rejection is technical in nature and submits that the matter requires fresh consideration in accordance with law by the court below.

6. Learned counsel for the respondents has appeared and taken part in the present proceeding, resisted the claim of the appellants making a submission that if the parties are absent to the proceeding that will be affected by non-joinder of necessary parties.

7. Having considered the rival contentions of the parties it

appears that in paragraph 15 the name of near relatives have been mentioned, there prayer has been made for issuance of citation to the following persons. The respondent does not dispute that their names are standing in the column of near relative. The court below recorded that citation was not issued, in terms of manner prescribed. In such view of the matter, it cannot be said that appellants have taken steps as per law provided but the court below in stead of dismissing the application should have passed corrective order giving direction to the appellants to take steps for issuance of general citation as well as special citation to the persons mentioned in paragraph 15 in due process.

8. In such view of the matter, the order dated 25.9.2012 is set aside and the matter is remanded back with a direction to the court below to issue general citation as well as special citation to the persons mentioned in paragraph 15 and if they file any objection take a proper course and decide the case on its own merit.

9. With the aforesaid observation this appeal is allowed.

Vinay/-

(Shivaji Pandey, J)

U			
---	--	--	--