

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5482 of 2015

=====

Jitendra Kumar Ranjan

.... Petitioner/s

Versus

Mahendra Prasad Chaudhary & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-11-2015 **1.** Heard the learned counsel, Mr. Arbind Kumar Singh, on merit on his request, although the interlocutory application has been listed under the heading for orders on petition.

2. This application under Article 227 of the Constitution of India has been filed by the objector petitioner against the order dated 25th February, 2015 passed by the learned Addl. District Judge Ist, Patna in Title Suit No.22 of 2009 whereby the Court below has allowed the amendment application filed by the respondent under Order VI Rule 17 CPC read with Section 278 of the Indian Succession Act.

3. It appears that probate case was filed by the plaintiff respondent being probate case No.24 of 1988 under Section 276 of the Indian Succession Act praying for grant of probate. The petitioner filed objection raising the ground that the probate



application is not maintainable. Thereafter, since the matter was contested by the defendant, the said probate case was converted to title suit being title suit No.22 of 2009 in view of the provision as contained in Section 295 of the Indian Succession Act. Thereafter, both the parties adduced evidence and then amendment application was filed by the plaintiff praying for converting the probate case as a case for the grant of letters of administration under Section 278 of the Indian Succession Act. This application has been allowed.

4. The learned counsel for the petitioner submitted that after 30 years, the amendment application have been allowed that too after the closure of the evidence of both the parties. According to the learned counsel, at the very initial stage in the objection itself, the petitioners had taken objection to the effect that in fact probate application is not maintainable, therefore, the plaintiff should have prayed for amendment as soon as the objection was filed but after 30 years, the amendment application have been filed and the Court below without considering this aspect has allowed the amendment wrongly.

5. Perused the impugned order. Admittedly, the petitioner had objected regarding the maintainability of the proceeding under

Section 276 of the Indian Succession Act. Both the parties have adduced evidence and now the question will be as to whether the probate is to be granted or letters of administration but, in my opinion, only because the proceeding has been converted to a proceeding under Section 278 of the Indian Succession Act, no prejudice will be caused to the present petitioner. So far delay is concerned, it is settled principle of law that on the ground of delay, the amendment cannot be denied if the amendment is sought for is necessary for effective decisions of the controversy between the parties. In my opinion, therefore, I find no reason to interfere with the impugned order in exercise of jurisdiction vested under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed and consequently the interlocutory application is also rejected.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--