

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5323 of 2012

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Bajo Das & Anr.

.... Petitioner/s

Versus

Kumari Reema Laheri & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Jayaswal

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

8 30-10-2015

Heard the learned counsel, Mr. Indu Bhushan on behalf

of the petitioners.

This application under Article 227 of the Constitution of India has been filed by the petitioners against the order dated 18.01.2012 passed by 4th Additional District & Sessions Judge, F.T.C., Vaishali at Hajipur in Succession Case No.10 of 2010 whereby the petitioner's application dated 01.07.2011 has been rejected by the court below.

It appears that the respondents filed the aforesaid Succession Case before the said Court alleging that they are the widow, sons and daughter of the deceased, Sunil Kumar who was residing with them at Hajipur at the time of his death. The petitioners filed application on 01.07.2011 alleging that in fact, Sunil Kumar with their son was residing at Mokama and he also died in the hospital at Mokama, therefore, the District Judge at Hajipur has no jurisdiction to entertain the Succession Case No.10



of 2010. The immovable property of the deceased is within the jurisdiction of District Judge, Patna. The parties filed their respective documentary evidences. The court below after appreciation of the same came to the conclusion that the Court at Hajipur has the jurisdiction to decide the case.

The learned counsel for the petitioners submitted that it is wrong to say that the deceased was residing with the respondents at Hajipur. In fact, the deceased was residing at Mokama where he died in the hospital, therefore, the District Judge, Patna has the jurisdiction so, the petitioners have filed Succession Case No.137 of 2010 in the Court of District Judge, Patna. The court below has wrongly held that because the respondent No.1 is residing at Hajipur, therefore, the Court at Hajipur has the jurisdiction to decide the Succession Case No.10 of 2010.

Perused the order passed by the court below. It appears that in support of their respective cases, the parties have adduced documentary evidences. It is admitted fact that deceased was employed in Central Custom Excise. From perusal of the order, it further appears that it is specific case of the respondents that the deceased was residing with her at Hajipur and in support of the fact that she is residing at Hajipur, documentary evidences have been adduced. After considering those documents, the court below

has recorded the finding that in fact, the respondent is residing at Hajipur.

Section 371 of the Indian Succession Act provides that “the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part.”

Here, the specific case of the respondents is that the deceased Sunil Kumar who was the husband of respondent No.1 was residing with her at Hajipur. She has produced the documentary evidences in support of the fact that she is residing at Hajipur. In such circumstances, the question that is being raised by the petitioners is purely a question of fact and the court below on the basis of materials recorded the finding. In that view of the matter, this Court in exercise of jurisdiction under Article 227 of the Constitution of India cannot substitute its own finding.

I, therefore, find no merit in this application and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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