

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12514 of 2014

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1. Santosh Kumar.
 2. Rajnish Kumar.
 3. Ranjeet Kumar.
 4. Ajit Kumar all sons of Sri Dwarika Singh. All residents of village Netar, P.S. Daniawan (Fatwa), District Patna.

.... Petitioner/s

Versus

1. Anil Kumar son of Sri Ram Krishna Prasad resident of village Pachwara, P.O. and P.S. Nalanda, District Nalanda.
2. Dwarika Singh son of Late Yadunandan Prasad Singh.
3. Sanni minor son of Sri Santosh Kumar under the guardianship of his father and natural guardian Santosh Kumar.
4. Niranjana Kumar son of Late Ramjee Singh.
5. Vikky.
6. Ricky both minor sons of Sri Niranjana Kumar under guardianship of their father and natural guardian Niranjana Kumar. All residents of village and P.O. Netar P.S. Daniawan (Fatwah), District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-03-2015

Heard Mr. Abinash Kumar, the learned counsel for the petitioners.

Taking exceptions to the order passed by the learned court below allowing the prayer of substitution of the respondent no. 1 in Title Suit No. 04 of 2003 (arising out of Letters of Administration

case) being heard analogously with T.S. No. 36 of 2003, the petitioners have filed this application under Article 227 of the Constitution of India.

Mr. Abinash Kumar, the learned counsel for the petitioners has placed the impugned order at length and has submitted that the respondent no. 1 is claiming on the basis of a will by Raj Kumari Devi who was the plaintiff in T.S. No. 36 of 2003 and objector in T.S. No. 04 of 2003 but she had herself no title over the land which she had bequeathed by the will in question and on this basis, it has been submitted that the learned court below has wrongly allowed the prayer of the respondent no. 1 to be substituted.

Mr. Singh, the learned counsel for the respondent no. 1, however, has submitted that the order for substitution passed by the learned court below by the impugned order is only conditional and not in absolute terms. By placing the impugned order, it has been pointed out that the respondent no. 1 has only been granted right to contest the two suits and his status as heir has not been declared. Mr. Singh has also relied on a decision of the Apex Court in the case of **Suresh Kumar Bansal Vs. Krishna Bansal reported in 2010 (2) SCC 162** to bolster his submission that the legatee can be substituted which shall be subject to the grant of probate of the will.

After considering the facts, circumstances and the

submissions, this Court finds that the substitution of the respondent no. 1 in place of Raj Kumari Devi on the basis of will executed by her in favour of the respondent no. 1 has not been in absolute terms but conditioned by the learned court below till the will in his favour is probated. The impugned order is in consonance with the principle laid down by the Apex Court in this regard in the decision as mentioned in **Suresh Kumar Bansal (supra)**. This Court, therefore, is not inclined to interfere with the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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