

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.745 of 2016**

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Kunti Devi

.... Appellant/s

Versus

Rajesh Kumar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vinay Mistry

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 28-09-2016 Heard the learned counsel for the petitioner.

Perused the impugned order dated 05.02.2016 passed by learned Munsif, Danapur in Title Partition Suit No.6 of 2010 whereby the learned Court below allowed the application filed by the plaintiff under Order 1 Rule 10 CPC and added the petitioner as defendant in the suit.

From perusal of the impugned order, it appears that the Court below found that this is a partition suit and in the partition suit, prayer has been made that this petitioner, Kunti Devi got a forged and fabricated will dated 14.11.2009. Therefore, it is necessary to add the petitioner as well as other heirs of Deo Prasad Singh. Accordingly, the Court below has allowed the application.

The learned counsel for the petitioner submitted that the validity or otherwise or due execution or otherwise of the Will cannot be questioned in partition suit. So far this submission is

concerned, it is a matter that can be considered finally at the time of hearing of the suit. It is admitted that Will is there in the name of the petitioner and she has already filed a probate case. It is also admitted fact that the property covered under the Will is subject matter of the partition suit.

The Hon'ble Supreme Court in the case of **Mumbai International Airport vs. Regency Convention Centre and Hotel Pvt. Ltd (2010) 7 SCC 417 at paragraph 24** has given some guideline for consideration of an application under **Order 1 Rule 10 CPC**. At paragraph 24 Point (iv) – it has been held by the Hon'ble Supreme Court that if an application is made by the plaintiff for implead someone as proper party subject to limitation bona fide etc., the Court will normally **implead him.**' In the present case, the plaintiff filed the application that adding her party and the Court below has allowed the same finding the fact that Will is in her favour.

In view of the above facts and circumstances of the case, in my opinion, no case for interference in supervisory jurisdiction is made out.

Thus, this Civil Misc. application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)