

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14838 of 2013

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1. Indradeo Gupta S/O Sahdeo Prasad Gupta Resident Of Mohalla- Gami Tola, P.O,P.S And District- Katihar.
 2. Kesri Kumar Singh S/O Late Rajendra Prasad Singh Resident Of Mohalla- Gami Tola, P.O,P.S And District- Katihar.
 3. Umesh Kant Purve S/O Late Kishun Purve Resident Of Naya Tola, P.O, P.S And District- Katihar.

.... Petitioner/s

Versus

1. Kirtiyanand Manjhi S/O Ajab Lal Mandal Resident Of Mohalla- Gami Tola, P.O,P.S And District- Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv & Mr. Krishna Kumar, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-12-2016

Heard learned counsel for the petitioners.

By the impugned order the prayer of the petitioners for their impleadment as party in the suit under Order 1 Rule 10(2) C.P.C has been rejected.

From the submission made on behalf of the petitioners as well as from perusal of the materials on record, it is manifest that a suit was filed by the plaintiff-respondent for partition of his 1/3rd share in the suit property on the ground that he was the adopted son



of the defendant no. 1 Ajab Lal Manjhi and his wife Sita Devi
defendant no. 2.

During the pendency of the suit both Ajab Lal Manjhi and Sita Devi died. However, some of the transferees from the defect no. 2 have been impleaded as defendants in her place. It is also apparent from the records as well as from the impugned order that the petitioner no. 3 Umesh Kant Purve had earlier filed a petition for his impleadment as party in the suit on the ground that he was the brother of defendant no. 2 Sita Devi and therefore had got right in the property left behind by Sita Devi under Section 15 of the Hindu Succession Act. The said prayer of petitioner no. 3 was turned down and affirmed by this Court also. Thereafter another petition was filed by the petitioner no. 3 along with petitioner nos. 1 and 2 on the ground of will said to have been executed in their favour by sale deed. It has not been disputed on behalf of the petitioner that a petition for grant of probate or letter of administration has been filed by the petitioners which after contest has been converted into title suit but no probate or letter of administration with regard to the said will has still been granted to the petitioners.

After considering the submissions and in view of the provisions under Section-213 and 214 of the Indian Succession Act



no right in the property of the deceased testator can be claimed on the basis of an unprobated will. Though the learned court below has rejected the petition of the petitioners mainly in view of the earlier order passed by this Court while considering the prayer of the petitioner no. 3 under Section 15 of the Hindu Succession Act but this Court after considering the facts and circumstances of the case does not find that the prayer of the petitioners on the basis of unprobated will to be impleaded as parties in the suit can be allowed as this stage. It is also apparent that the decree which may be passed in the said pending partition suit would not be binding upon right title and interest which the petitioners claims to have acquired in the suit property. This Court, therefore, is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India in the backdrop of these facts.

However, the rejection of the prayer of the petitioners for their impleadment as party in the suit would not prejudice their claim of right, title and interest in the suit property for which they are entitled to seek remedy in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.12.16
Transmission Date	N.A.

