

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1295 of 2016**

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Purushottam Kushwaha & Anr

.... Appellant/s

Versus

Yogi Shantinath

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Ranjan

For the Respondent/s : Mr.

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

ORAL ORDER

2 14-12-2016

Heard learned counsel for the petitioners.

2. Perused the impugned order dated 26.06.2016 passed by learned District Judge, West Champaran, Bettiah in Probate Case No.24 of 2013 whereby the learned court below has rejected the caveat filed by the petitioners for seeking permission to contest the probate case.

3. It appears that the probate case was filed by the respondent under Section 276 of the Indian Succession Act. The present petitioners earlier filed application under Order 1 Rule 10 of the Code of Civil Procedure for being added as party. The trial court rejected the application recording a clear finding that the petitioners have got no caveatable interest. Thereafter the petitioners filed C.W.J.C. No.15353 of 2014 before the High Court and the High Court dismissed the writ application and thereby confirmed the order of the trial court.



4. From perusal of the order passed by the High Court, it appears that the petitioners sought permission to withdraw the application and, therefore, the High Court has dismissed the writ application as withdrawn and thereby the order passed by the court below holding that the petitioners have got no caveatable interest has been upheld. Liberty was granted to the petitioners to file a fresh application according to law. Then the petitioners have filed application under Order 1 Rule 10 of the Code of Civil Procedure and again prayed for being added as party. By the impugned order the court below has rejected the same. The petitioners are moving again under the same provision i.e. under Article 227 of the Constitution of India and praying for the same relief.

5. This Court in the case of **Nitya Nand Singh Vs. M/s Aditya Co-operative Housing Society Ltd., 2011 (3) P.L.J.R.728** has held that there is no distinction between an appeal and a revision. Dismissal of the civil revision in any manner whatsoever either by default or by withdrawal simplicitor or by dismissal of any preliminary matter, would naturally amount to confirmation of order under challenge. Admittedly the prayer of the petitioners for permission to contest was earlier rejected by the High Court. Therefore, in exercise of the same provision the order rejecting the petitioners' prayer cannot be reviewed now. The



order rejecting the application earlier will operate as res-judicata and the matter cannot be re-agitated again by the petitioners. Thus, the learned court below has rightly rejected the application holding that the order passed by the trial court has already been confirmed by the High Court.

6. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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