

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7047 of 2015**

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Rumi Devi

.... .... Petitioner/s

Versus

Shiv Shankar Singh & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ranjeet Kumar

For the Respondent/s : Mr.

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

4      02-05-2016                      Heard the learned counsel, Mr. Ranjeet Kumar for the petitioner and the learned counsel, Mr. Chandra Kant for the respondents.

The plaintiff-respondent, Shiv Shankar Singh filed partition suit claiming 1/3<sup>rd</sup> share in the suit property against his co-sharers. The petitioner in the said suit filed application for being added as party under Order I Rule 10 C.P.C. on the ground that she is daughter of the plaintiff-respondent, Shiv Shankar Singh. The said application has been rejected by the Court below.

According to the learned counsel for the petitioner, the plaintiff, Shiv Shankar Singh is the father of the petitioner and in support of the same various documents were produced in the Court below but the Court below by the impugned order dated 02.03.2015 passed by Sub Judge, Siwan in Title Suit No.65 of 2000 rejected the said application without taking into

consideration the admitted documents wherein the parentage of this petitioner has been admitted.

On the other hand, the learned counsel, Mr. Chandra Kant for the respondents submitted that the simple suit for partition has been filed by the plaintiff-respondent against his co-sharers. In the partition suit, neither the sons of the plaintiff nor other daughters of the plaintiff are party. Therefore, for deciding as to whether the plaintiff, Shiv Shankar Singh has got 1/3<sup>rd</sup> share in the suit property or not, the presence of the petitioner is not at all necessary. If at all the petitioner shall succeed in establishing that she is the daughter of Shiv Shankar Singh from first wife, she will be entitled to a share in the property of the plaintiff, Shiv Shankar Singh.

Perused the plaint which has been annexed as Annexure 1 to this application. Admittedly, the sons and daughters of Shiv Shankar Singh are not party. Shiv Shankar Singh has filed this partition suit for his share to the extent of 1/3<sup>rd</sup> share. According to amendment of the Hindu Succession Act, 2005, the daughters will get equal share to that of the son after the death of the father. Therefore, so far the 1/3<sup>rd</sup> share if that will be given to Shiv Shankar Singh in partition that will devolve on the coparceners after death of Shiv Shankar Singh equally but for deciding as to

whether Shiv Shankar Singh has 1/3<sup>rd</sup> share in the suit property or not, the presence of the petitioner is not at all necessary. Therefore, the order passed by the Court below cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this writ application is dismissed.

However, the finding recorded by the Court below in this suit in a proceeding under Order I Rule 10 C.P.C. will not operate as *res judicata* nor it will prejudice any of the parties, if any future litigation will arise regarding the same question.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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