

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13257 of 2014

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Gyan Prakash Hilariyan s/o Late Hilarian Bernad Resident of Mohalla Christian Quarter, Bettiah Town, Ward No. 3 , P.O. and P.S. - Bettiah, Tapa Khota, Pergana Majhoua, District - West Champaran.

.... Petitioner/s

Versus

1. Alfred Bernad Thakur s/o Late Bernad Lawrence Resident of Mohalla Christian Quarter, Bettiah Town, Ward No. 3 , P.O. and P.S. - Bettiah, Tapa Khota, Pergana Majhoua, District - West Champaran.
2. Violet Anthony w/o Late Anthony Bernad.
3. Chandan Anthony.
4. Vimal Anthony.
5. Sushma Anthony.
6. Shobha Anthony.
7. Prity Anthony All are sons of Late Anthony Bernad.
8. Ranjan Michel.
9. Ravi Michel.
10. Rana Michel.
11. Rajesh Michel.
12. Rina Michel. All are sons and daughters of Late Michel Bernad Thakur.
13. Mery Hilarian w/o late Hilarian Bernad Thakur.
14. Igna Lisyus Hilarian.
15. Halen Hilarian
16. Agnes Hilarian.
17. Meena Hilarian.
18. Sushma Hilarian. All are sons and daughters of Late Hilarian Bernad. All resident of Mohalla Christian Quarter, Bettiah Town, Ward No. 3 , P.O. and P.S. - Bettiah, Tapa Khota, Pergana Majhoua, District - West Champaran.
19. Sudhanshu
20. Stipen
21. Anuj Oscar.
22. Albert John Sharma.
23. Edward John Sharma
24. Manju Peter

25. Indu Sharma Siomon.

26. Madhuri John Sharma.

27. Pushpa John Sharma.

28. Teresa John Sharma.

29. Alok Sharma.

30. Rashmi Sharma All are daughter of Late John Sharma Resident of Mohalla Christian Quarter, Bettiah Town, Ward No. 3, P.O. and P.S. - Bettiah, Tapa Khota, Pergana Majhoua, District - West Champaran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-09-2016

Heard learned counsel for the parties.

The petitioner is aggrieved by the impugned order by which the learned court below has allowed the prayer on behalf of the plaintiff-respondent for deleting the name of defendant no. 5 in the final decree proceeding and allot her share in the share of the plaintiff.

From the materials on record as well as impugned order, it is transparent that the claim of the plaintiff-respondent no. 1 has been made on the basis of a deed of will executed by the deceased defendant no. 5 on 09.11.2011 in favour of the plaintiff-respondent with respect to her share. It also appears to have been admitted by the parties that the said will does not require probate or letters of administration as the parties are Christian. It also appears as mentioned by the learned court below in the impugned order that by order dated

28.03.2008 the legatee under the said will was substituted in place of the deceased defendant no. 5 who had executed the said will and the aforesaid order of substitution was affirmed by this Court as well. It has been further averred in paragraph-17 of this application that the present petitioner has filed T.S. No. 160 of 2014 seeking the relief against the said will as void, inoperative, illegal and not binding upon him.

After careful consideration of the aforesaid facts and circumstances, this Court is not inclined to interdict the impugned order under Article 227 of the Constitution of India.

The application is, accordingly, dismissed with observation that the right, title and interest of the parties in the suit property as determined in the final decree proceeding will be subject to the final decision of the T.S. No. 160 of 2014 filed by the petitioner.

(V. Nath, J)

Devendra/-

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