

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.238 of 2015

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Rajendra Rai & Anr

.... Petitioner/s

Versus

Chandradeo Rai & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 09-11-2016

Heard learned counsel, Mr. Suresh Prasad, appearing for the petitioners and learned counsel, Mr. Pramod Kumar Pandey, appearing for the respondents.

2. Perused the impugned order dated 17.09.2014 passed by the Additional District Judge-VIII, Motihari, East Champaran in Probate Case No. 25 of 2002, whereby the learned court below allowed the intervention application filed by the respondents herein and added them as party in the aforesaid probate case.

3. Learned counsel for the petitioners submitted that it is not the fact that the gifted property is involved in the Will sought to be probated and secondly that the gift deed executed by Chandradeo Rai in favour of his daughter Uma Devi is illegal and void document. Therefore, on the basis of the void documents, the intervener cannot be added as party in the probate case. So far the property claimed by the intervener on the basis of the gift are

concerned, those are the properties belonging to Chandradeo Rai and not Mahendra Rai and the Will sought to be probated was executed by Mahendra Rai in favour of the petitioner with respect to his property.

4. On the other hand, learned counsel for the respondents submitted that it is not the fact that Mahendra Rai executed the Will only with respect to his property rather some part of the gifted property is also included in the gift deed and, therefore, the interveners have got direct interest in the property as such they are required to be heard in the matter.

5. Perused the impugned order. The learned court below in the impugned order categorically recorded finding that Baidhyanath Rai is claiming the property covered under Will on the basis of gift deed and the gift deed is filed and therefore he is added as party in the interest of justice.

6. Now, the question as to whether the property involved in Will is also involved in the gift deed or not is a pure question of fact. Both the parties are claiming contrary to each other and the court below knowing these facts held that since the gift deed has been filed on the basis of which the interveners are claiming interest in the property covered under the Will, this Court for the purpose of supervising the order cannot take another view

after perusal of the contents of the Will and the gift deed, which are documentary evidences produced in the court below. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this writ application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)