

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3562 of 2014

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Madhav Prasad Singh

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Dhirendra Pratap Singh

For the Respondent/s : Mr. Md. N. Hoda Khan

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2. 11-01-2016 Heard the learned counsel for the petitioner.

It appears that the respondent No.1-State of Bihar has wrongly been made party in this application under Article 227 of the Constitution of India. Accordingly, the name of State of Bihar is deleted. The petitioner is permitted to add plaintiff No.2 as party respondent through, Sri Nagendra Sharan, Advocate, who is respondent No.2 herein.

The learned counsel for the petitioner relying on the provision of Section 12 of Hindu Minority and Guardianship Act, 1956 submitted that the Court below could not have appointed the Advocate, Mr. Nagendra Sharan, as guardian of the minor plaintiff No.2.

It appears that the mother of plaintiff No.2 and the minor plaintiff No.2 filed partition suit No.131 of 2003. When the plaintiff No.1, i.e., mother of plaintiff No.2 died, the defendant

petitioner filed application that the suit has already been abated because of death of adult plaintiff No.1 and the plaintiff No.2 is the minor. The petitioner is the grand father of plaintiff No.2. The Court below by the impugned order has held that the suit will not abate because right to sue survives and since the plaintiff No.2 is minor, a guardian adlitem is to be appointed and Advocate is appointed as guardian for the plaintiff.

So far the submission of the learned counsel for the petitioner that there is bar under Section 12 of the Hindu Minority and Guardianship Act, with respect to the minor in partition suit is concerned, it may be mentioned here that the guardian adlitem has been appointed only to pursue suit and protect the interest of the minor in the partition suit. The independent application for appointment of guardian has not been filed and in such view of the matter, the impugned order cannot be interfered with. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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