

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11470 of 2014

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Unmesh Narayan S/o Late Lakshmi Narain Resident of Village Swetha, P.S. Parsa Bazar, District Patna presently at 9 MIGH, Lohia Nagar, Kankarbagh Colony, P.S. Kankarbagh, District Patna.

.... Petitioner

Versus

1. Most. Mahasundri Devi W/o Late Lakshmi Narain Sinha
2. Vinod Narain S/o Late Lakshmi Narain Sinha Both Resident of Village Swetha, P.S. Parsa Bazar, District Patna.
3. Smt. Sunita Kumar D/o Late Lakshmi Narayan Sinha
4. Smt. Suchitra Narain Kumar S/o Late Lakshmi Narayan Sinha All Resident of Village Swetha, P.S. Parsa Bazar, District Patna.
5. Dinesh Singh
6. Prince Singh Both S/o Ram Swarath Singh Resident of Village Koriyawan, P.S. Masaurhi, District Patna.
7. Smt. Kanti Devi W/o Dinesh Singh Resident of Mohalla Salimpur Ahra, P.S. Kadam Kuan, Town and District Patna.
8. Smt. Sushma Devi D/o Ram Swarath Singh Resident of Koriyawan, P.S. Masourhi, District Patna.
9. Ram Swarath Singh S/o Late Nourangi Singh Resident of Village Koriyawan, P.S. Masaurhi, District Patna.
10. Lalmani Devi W/o Sachindra Singh Resident of Village Gosain Math, P.S. Harnaut, District Nalanda at present C/o Ram Jeevan, Resident of Mohalla Kankarbagh, Co-operative Colony, Patna-20.
11. Phulmani Devi W/o Ramashish Singh Resident of Village Bhatheri, P.S. Maner, District Patna.
12. Meena Devi Widow of Late Chandra Shekhar Singh Resident of Gardaanibagh, P.S. Gardanibagh, District Patna.
13. Badri Narayan Singh Resident of Village Swetha, P.S. Phulwari, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinay Raj
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-08-2016

V.Nath, J.

The learned senior counsel for the petitioner is permitted to make correction in the provision of law as mentioned in the interlocutory application (I.A.No.6232/2016).



Heard Mr.D.K.Sinha, learned senior counsel for the petitioner in the interlocutory application (I.A.No.6232/2016) which has been filed for substitution of the heirs of the deceased respondent no.8 Sushma Devi stating that she died on 03.01.2016 leaving behind her heirs, as mentioned in paragraph-1 of the petition.

After considering the submissions, the prayer for substitution is allowed and the heirs of the deceased respondent no.8, as mentioned in paragraph-1 of the petition is substituted in her place after expunging her name from the main application.

Heard Mr.D.K.Sinha, learned senior counsel for the petitioner on merits of this application.

The plaintiff is the petitioner in this application questioning the legal sustainability of the impugned order by which the learned court below has directed the plaintiff to lead evidence. The fact is not in dispute that earlier an application for grant of probate of a will was filed by the petitioner and after contest the same was converted into a title suit. The conversion to the title suit appears to have been done in the year 1978. By the impugned order the learned court below has directed the plaintiff to lead evidence.

Mr. Sinha, learned senior counsel for the petitioner has submitted that there has been a panchnama (award) in between the parties and the said award has also been filed in the suit

but the learned court below has not passed any order on the said petition. It has also been pointed that the valuation matter has still not been decided and therefore the direction by the learned court below to the plaintiff-petitioner to lead evidence should not have been passed.

After considering the submissions and the perusal of the impugned order, it is manifest that the probate application filed by the plaintiff-petitioner has been converted into a title suit. The submission with regard to the settlement of dispute by compromise or award in a probate proceeding cannot be legally sustained as a proceeding for probate cannot be decided on the basis of compromise or through intervention of the panches leading to an award. It is against the public policy if the probate proceeding is decided on the basis of compromise without there being any evidence with regard to the genuineness of the will in question. So far as the submission with regard to the valuation of the suit property is concerned, it is for the court to decide at any stage of the proceeding and therefore the proceeding of the suit which has been pending since 1978 cannot be allowed to be further delayed only on the ground that neither the valuation has been determined nor award has been considered. In the backdrop of these facts, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India as prayed for.

The application is accordingly dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2016
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