

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12267 of 2015

Indu Pandey

.... Petitioner/s

Versus

Rama Shankar Pandey & Anr

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 19-05-2016 Heard the learned counsel, Mr. Mrityunjay Kumar Tiwary, for the petitioner and the learned counsel, Mr. Chandrakant, for the respondent.

The learned Add. District Judge Ist Patna city in Title Suit No.32 of 2009 arising out of Probate Case No.67 of 2008 rejected the substitution application filed under Order 22 Rule 4 of the Code of Civil Procedure by the plaintiff petitioner.

From perusal of the impugned order dt.09.04.2015, it appears that the plaintiff petitioner filed the probate case under Section 276 of the Indian Succession Act. When it was contested by the original defendant, Bhagwat Narain Pandey, the probate case was converted to title suit in view of Section 295 of the Indian Succession Act. Subsequently, Bhagwat Narain Pandey, was examined as witness who stated in his deposition that he has



already executed a Will in favour of Rama Shanker Pandey and Lila Devi. On his death, Rama Shanker Pandey and Lila Devi were substituted as defendant in the suit. Thereafter, an application under Order 22 Rule 4 has been filed by the plaintiff. The Court below considering the above facts that the original defendant has admitted that he has already executed Will in favour of Rama Shanker Pandey and Lila Devi who are contesting the suit, it is not necessary to substitute so called heirs of Bhagwat Narain Pandey and rejected the application.

In view of the above facts and circumstances of the case, it cannot be said that the order passed by the Court below is irrational or the Court below passed the order in the manner not permitted by law. The order passed by the Court below will also not prejudice to the petitioner in any way nor it occasioned failure of justice. Thus, I find no reason to interfere with the impugned order.

Accordingly, the writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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