

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.560 of 2010

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Bebi Devi @ Rinku Kumari, w/o Birendra Tiwary, D/o late Hridyanand Pandey, r/o vill-Niyazpur, p.o.-Nadauan, p.s. – Natwar, Distt – Rohtas
.... Appellant/s

Versus

1. Achhaibar Pandey, s/o late Basant Pandey, r/o vill – Baraon, p.o- Baraon, p.s.- Nokha, Distt – Rohtas.
2. The Estate of late Hridya Nand Pandey, s/o late Ramadhar Pandey, r/o vill – Niyajipur, p.o. – Nadauan, p.s. – Dinara, (o.p. Natwar), Distt - Rohtas
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Upadhyay, Adv.
Mr. Mithilesh Kumar Upadhyay, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6. 23-02-2016 Instant petition has come up for consideration over I.A. No. 5027/13 relating to limitation. Admittedly, by the judgement impugned, the learned lower Court had granted letter of administration/probate of a 'Will' executed by late Hridya Nand Pandey, son of Ramadhar Pandey of village – Niyajipur, P.S. – Dinara, Distt – Rohtas.

From perusal of the judgement, it is evident that there happens to be disclosure in the petition that Hridya Nand Pandey had two wives. The first wife died issueless and the second wife Shanti Devi also happens to be issueless.

Appellant Baby Devy @ Rinku Kumari has claimed that she happens to be the daughter of late Hridya Nand Pandey from second wife Shanti Devi and further, intentionally, dishonestly her name has been left by the propounder with a purpose wherein he

succeeded and on account thereof, proceeded in ex-parte manner and got the order impugned.

Two kinds of options in the facts and circumstances of the case is found, available before the aggrieved, the first one to pray before the learned Court below for revocation in terms of Section 263 of the Indian Succession Act and the other to file an appeal under Section 299 of the Indian Succession Act whereunder instant memo of Appeal has been filed.

At the present moment, learned counsel for the appellant has opted the application of Section 263 of the Indian Succession Act, and on account thereof, is permitted to withdraw this memo of appeal with a liberty to file a petition before the competent Court below asking for revocation on the justifiable grounds whereupon the learned lower Court will proceed and pass appropriate order in accordance with law without being influenced by the instant withdrawal in presence of both the parties. If the petition is filed within six weeks then in that event, no question of limitation will be raised.

Accordingly, the instant memo of appeal is dismissed as withdrawn and in likewise manner I.A. 5027/2013 is disposed of.

(Aditya Kumar Trivedi, J.)

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