

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8458 of 2013

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1. Ashutosh Kumar Khatri S/O Baidehi Sharan Khatri R/O Village- Rafiganj, Tola Imadpur, P.O. Andp.S.- Rafiganj, District- Aurangabad.

.... Petitioner/s

Versus

1. Baidehi Sharan Khatri S/O Late Baijnath Lal Khatri R/O Village- Charkawan Mahmood Imadpur, P.O. Andp.S.- Rafiganj, District- Aurangabad

2. Ramadhar Prasad Khatri S/O Late Baijnath Lal Khatri R/O Village- Charkawan Mahmood Imadpur, P.O. And P.S.- Rafiganj, District- Aurangabad

3. Rameshwar Prasad Khatri S/O Late Baijnath Lal Khatri R/O Village- Charkawan Mahmood Imadpur, P.O. And P.S.- Rafiganj, District- Aurangabad

4. Awadhesh Lal Khatri S/O Late Baijnath Lal Khatri R/O Village- Charkawan Mahmood Imadpur, P.O. And P.S.- Rafiganj, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-12-2016

Heard Mr. Raghib Ahsan, learned senior counsel appearing on behalf of the petitioner.

The legal sustainability of the impugned order by which the learned court below has turned down the prayer of the petitioner for his impleadment as party in the appeal has been questioned before this Court under Article 227 of the Constitution of India.

There is no dispute to the fact that the suit for partition was filed by respondent no. 2, wherein, his remaining brothers were impleaded as defendants. The said suit was decreed and



thereafter the appeal has been filed by the defendant no. 2 in the said suit who is none-else than the father of the present petitioner. During the pendency of the appeal, the present petitioner filed a petition for his impleadment as party on the base that the grandmother of the petitioner had executed a will in his favour and he had filed petition for grant of probate or letter of administration in his favour. The court below after considering the submissions made on behalf of the parties including the petitioner has rejected the prayer observing that the petitioner may file his independent suit on the basis of the will.

Mr. Raghiv Ahsan, learned counsel appearing on behalf of the petitioner has submitted that the proceeding for grant of probate or letter of administration as filed by the petitioner is at the fag end and therefore, the learned court below should have exercised its jurisdiction in impleading the petitioner as party in the appeal. It has also been submitted that driving the petitioner to file his own suit will unnecessarily result in multiplicity of the proceeding.

After considering the submissions and perusal of the impugned order, it is manifest that the grant of decree of 1/4th share in the suit property in the partition suit has been challenged by one of the defendants in appeal and at that stage the petitioner filed the petition praying for his impleadment as party in the appeal. It is also



manifest that the claim of the petitioner over the suit property is on the basis of will said to have been executed by his grandmother in his favour and therefore, apparently the petitioner is not claiming through any of the parties to the suit. It is demonstrably clear that the petitioner after the grant of probate and letter of administration will have the independent cause of action against the parties to the suit. The submission that non impleadment of the petitioner as party in the proceeding would lead to multiplicity of the proceeding has been completely answered by the decision of Apex Court in the case of **Ramesh Hiranand Kundanmal vs The Municipal Corporation of Greater Bombay & Ors 1992(2) Judgment Today 116** wherein, it has been ruled that the multiplicity of proceeding after refusal of the prayer for addition as parties in the suit has not been envisaged under Order 1 Rule 10(2) C.P.C as a criteria for allowing the prayer.

In the backdrop of aforesaid facts and discussions, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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