

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11957 of 2013

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1. Bholu Paswan.

2. Ramjee Paswan both Sons of Late Keshwar Paswan Resident of Village -
Chandauli, P.S. Kasma in the District of Aurangabad.

.... Petitioner/s

Versus

Dharambir Paswan Son of Shri Ram Nandan Paswan Resident of Village-
Chandauli, P.S. Kasma in the District Of 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: 21-11-2016

Heard learned counsel for the parties.

The legal sustainability of the impugned order by which the learned court below has turned down the prayer of the petitioners for impleading them as parties in the probate proceeding is in question in this application under Article 227 of the Constitution of India.

The fact is not in dispute that one Sukhlal Paswan had three sons namely Keshwar Paswan, Shivnandan Paswan and Ramnandan Paswan. The widow of Shivnandan Paswan is said to have executed a registered will in favour of the descendants of Ramnandan Paswan who is respondent in the present application. The petitioners are descendants of Keshwar Paswan and they have filed a petition for impleadment as parties in the suit.



After considering the submissions and materials on record, it is manifest that the petitioners are the descendants of common ancestor Sukhlal Paswan and from perusal of their petition (Annexure-2), it also transpires that they have asserted the will propounded by the respondent as forged, fabricated and fraudulent. This Court is unable to sustain the reasonings assigned by the learned court below that the petitioners must file a suit/proceeding for cancellation of the will and their impleadment in the probate proceeding would complicate the matter. It is well settled that the judgment in a probate proceeding is a judgment in rem and in the background of facts of the present case, the petitioners appear to be the person interested in contesting the grant of probate to the respondent, as prayed. The submission on behalf of the respondent that the will in question is a registered will, will not improve the reasonings in the impugned order because the registration of the will, will not make difference while considering its genuineness before granting the prayer for grant of probate or letters of administration.

This Court, for the aforesaid reasons, comes to the conclusion that the learned court below has committed material irregularity and illegality in passing the impugned order. This application is, accordingly, allowed and the impugned order is set aside. The petition (Annexure-2) filed by the petitioners is allowed



and the petitioners are directed to be impleaded as parties in the probate proceeding in accordance with law.

The learned court below is further directed to proceed in accordance with law after impleading the petitioners as parties in the suit.

(V. Nath, J)

Devendra/-

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