

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No. 677 of 2017

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Rajesh Kumar Jagnani adopted Son of Late Smt. Satyabhama Jagnani and Late Parmeshwar Prasad Jagnani Both Resident of Village-Nirmali, P.S. Nirmali, District-Supaul. at Present Residing in Poddar Complex' P.O. & P.S. Mithanpura, District-Muzaffarpur.

.... Appellant/s

Versus

1. Dr. Niranjan Kumar Yadav Son of Late Kunj Bihari Yadav Resident of Village-Kamalpur, P.S. Kunauli, District-Supaul, at Present resident of Nirmali Bazar Under notified area (Nagar Panchayat) Ward No. 11, P.O. & P.S. Nirmali Bazar, District-Supaul.
2. Damodar Jagnani Son of Late Basudeo Jagnani, Resident of Village-Barhaiya Bazar, P.O. and P.S. barhaiya, District-Begusarai
3. Umesh Kumar Poddar Son of Late Ram Bilash Poddar, Resident of Mohalla Ram Bag (Kalidrabad), Darbhanga Town, P.O. & P.S. Darbhanga Sadar, District-darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-05-2017

Heard Mr. J.K. Verma, learned counsel for the petitioner and also learned counsel for the respondent no. 1 on merits as well as in the interlocutory application (I.A. No. 3433 of 2017) filed by the petitioner for interim relief.

The legal acceptability of the impugned order by which the learned court below has rejected the petition filed by the petitioner praying for being impleaded as party in the Probate Case No. 02 of



2012 on the ground that he was the adopted son of the deceased testator has been assailed in this application.

The matrix of facts relevant for the present application is that the Probate Case No. 02 of 2012 has been filed by the respondent no. 1 praying for grant of probate or letters of administration with regard to the will said to have been executed by Satyabhama Devi in his favour. The petitioner claiming himself to be the adopted son of the said testator Satyabhama Devi filed the petition for being impleaded as party in the probate case. The petitioner stated in the said petition that he was adopted by Satyabhama Devi and a registered deed of adoption was also executed by her. The prayer of the petitioner was contested by the respondent no. 1 alone. The learned court below has passed the impugned order rejecting the prayer of the petitioner on the sole ground that as the natural father of the petitioner is there on record in the probate case, the prayer of the petitioner to be impleaded as party is not legally tenable.

Mr. Verma, learned counsel for the petitioner has submitted that the learned court below has failed to consider the legal presumption with regard to adoption as envisaged under Section 16 of the Hindu Adoption and Maintenance Act, 1956 in cases where the adoption is done through a registered deed. It has also been propounded that the learned court below has failed to consider the



other facts and has rejected the prayer of the petitioner only on the ground of his natural father being on record.

Learned counsel for the respondent no. 1 has supported the impugned order and has submitted that the deed of adoption (Annexure-P/1) is not a genuine document and is also not a registered document.

After considering the submissions and perusal of the materials on record, it is evident that the petitioner's claim to be impleaded as a party in the probate case is clearly on the basis of the adoption as evidenced by the deed of adoption (Annexure-P/1) which is a registered document. The learned court below has failed to take into notice of the same while passing the impugned order. The reasoning assigned by the learned court below that in view of the presence of the natural father of the petitioner on record in the probate case the petitioner is not entitled to be made a party is not legally sustainable for the simple reason that the claim/case of the petitioner in the probate case is not on the basis of being the natural son of his father. The learned court below ought to have considered the claims of the parties and the documents produced in support of the same in accordance with law to find out the presence of caveatable interest of the petitioner in the probate case. The impugned order is definitely erroneous and deserves to be overturned.



Accordingly, this application is allowed and the impugned order is set aside. The matter is remitted back to the learned court below for decision afresh in accordance with law.

(V. Nath, J)

Devendra/-

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