

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.398 of 2017

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Prem Prakash Sah Son of late Shyam Sunder Sah Resident of Jagdishpur, P.O. and
P.S. Jagdishpur , District- Bhagalpur.

.... Appellant/s

Versus

1. Prabhash Chandra Sah son of late Ram Chandra Prasad Resident of Betwan
Bazar, P.S. Munger District Munger, Presently residing at Jagdishpur, P.O and
P.S. Jagdishpur, and District Bhagalpur.
2. Shambhu Prasad Sah Son of late Lal Mohan Sah Resident of Jagdishpur, P.O.
and P.S. Jagdishpur , District- Bhagalpur.at Present resident of Mirjanhat Road,
P.O. Mirjanhat, P.S. Mojahidpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Manoj Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-05-2017

Heard Dr. Manoj Kumar, learned counsel for the petitioner.

By the impugned order, the learned court below has turned
down the prayer of the petitioner for being impleaded as intervenor-
defendant in the probate case.

The Probate Case No. 34 of 2012 has been filed by the
respondent no. 1 praying for grant of probate or letters of
administration with regard to the will executed by Parwati Devi in his



favour. It also transpires from the impugned order that there had been partition in the family in which one Kamla Prasad Sah was allotted the property which he transferred in favour of his wife in the year 1963 by way of gift. His wife Parwati Devi subsequently had executed a registered will in favour of the respondent no. 1. The present petitioner claims to be the family member of Kamla Prasad Sah and therefore claims to have interest in the property of Kamla Prasad Sah. It is also the case of the present petitioner that the will has included his property as well.

From the perusal of the petition filed by the present petitioner in the learned court below, it transpires that the fact of partition by Yadast Batwara has been admitted. In that view of the matter, the property subject matter of the will is prima facie the property of the testator. Learned counsel for the petitioner has submitted that as the petitioner had no knowledge of the gift deed in the 1963 therefore the same would not stand in his way to question the will. The learned court below has turned down the prayer of the petitioner on the ground that he has no caveatable interest in the property subject matter of the suit. This Court, in the aforesaid background facts, is not inclined to exercise its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.



The application is accordingly, dismissed.

The petitioners shall however be at liberty to take appropriate steps for protection of his right, title and interest, if any, in his property in accordance with law.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
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