

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.103 of 2016

In
Test Case No.6 of 2014

Abhishek Anand Son of Late Sita Ram Sao Resident of
Chiraiyatard, Nala Road, P.S. - Kankarbag, in front of Budha Nagar,
Road No. - 3, P.S. - Kankarbag, P.O. - G.P.O., District – Patna.
Appellant

Versus

1. Raj Kumar Gupta, Son Late Sita Ram Sao, Resident of
Chiraiyatard, Nala Road, P.S. - Kankarbag, in front of Budha
Nagar, Road No. - 3, P.S. - Kankarbag, P.O. - G.P.O., District –
Patna
2. Pankaj Kumar @ Kanhai Son of Late Sita Ram Sao Pankaj
Electric, Chandmari Road, Near Surya Path, Patna, Dist - Patna.
3. Nanda Sao
4. Kishore Sao Serial no 3 & 4 both sons of Late Ram Narain Sao
resident of Nathupur Parsa, P.S. - Parsa, Dist - Patna.

... Respondent /s

Appearance :

For the Appellant/s : Mr. Madhuri Lata
For the Respondent/s : Mr. Laxmi Narayan Das

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

12 28-11-2017 Heard learned counsel for the appellant and counsel for
the respondents.

An objection was taken in the Testimonial Case No. 6 of
2014 that one Raj Kumar Gupta had filed a counter affidavit on
18.11.2014 in the testimonial case. His counter affidavit cannot
be accepted, because no caveat petition was filed prior to the
same and Patna High Court Rules, Chapter-XI, Rules 17 and 18
creates an embargo.



The Learned Single Judge while dealing with such an objection had this to say:

“The counsel for the applicant submits that in terms of rule 21, a supplementary affidavit filed subsequent to caveats by the near relatives aforesaid be treated to be written statement filed by them and earlier affidavits should be rejected. Placing reliance on the judgement reported in (2008) 4 SCC 300, para-27 the counsel submitted that the Hon'ble Apex Court has given observation that any affidavit filed subsequent to the caveat be treated as a written statement nor any affidavit prior to that. It is well known principle of law that the procedural law is a hand made law. It cannot be mistress of justice. It is made to advance the justice and suppress mischief. So far Rule 18 is concerned, eight days has been fixed for filing objection after filing caveats, submission is it cannot be extended. This issue came for consideration before this Court in the case of Ajay Kumar Singh @ Ajay Kumar vs. Raj Narayan Singh @ Rajan and others in Test Suit No. 1 of 2009 vide order dated 28/1/2009 where it has been considered thread-barely dealt with and this Court has held that counter affidavit filed even after eight days can be accepted and objections were treated to be written statement and as such, the caveat is accepted as well as the affidavit. But the question for consideration falls whether the counter affidavit which has been filed earlier by the near relative be treated as a written statement in this present proceeding or not. Here in the supplementary affidavit, there is no pleading, save and except, adopting the statement made in the earlier counter affidavit.

In such view of the matter, earlier counter affidavits be treated to be part of supplementary affidavit and will be treated as a written statement in the suit.”

The view taken by the Learned Single Judge on the



objection so made has been rightly negated and we too get a feeling that the objection, which is sought to be made on behalf of the present appellant, is only to have a technical knock out in the match with object of ousting many necessary parties, who have vital interest in the decision of the testamentary suit.

No interference, therefore, is warranted with the order of the Learned Single Judge.

Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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