

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1064 of 2016
Arising out of
C.W.J.C. No. 8241 of 2015**

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Gopesh Kumar @ Kumar Gopesh, son of Sri Shiv Bhagwan Gupta, resident of village- Barbigha, P.S. Barbigha, Dist- Sheikhpura.

.... Appellant/s

Versus

1. Sri Vijay Krishna Gupta, son of Late Badri Narain
2. Sri Chandrahas Kumar, son of Sri Vijay Krishna Gupta.
3. Nalesh Kumar, son of Sri Vijay Krishna Gupta.
4. Roshan Kumar, son of Sri Vijay Krishna Gupta, All resident of village- Barbigha, P.S. Barbigha, Dist- Sheikhpura.

.... Respondent/s

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Appearance :

For the Appellant/s :

For the Respondent/s :

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT**

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-03-2017

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 8th of April, 2016 in C.W.J.C. No. 8241 of 2015 whereby, the challenge to an order passed by the Probate Court on 2nd of March, 2015 in Probate Case No. 12/1999 remained unsuccessful.

3. An order passed by a Civil Court can be challenged only in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India. No intra court appeal is maintainable against



such an order, as has been held by the Supreme Court in the case reported as Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors., (2015) 9 SCC 1. The Court held as under:-

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam; (2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.”

4. In view thereof, the Letters Patent Appeal is dismissed as not maintainable. The appellant is at liberty to avail such other remedy as may be available to the appellant in accordance with law.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.03.2017
Transmission Date	

