IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7493 of 2012

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Sushila Devi

.... Petitioner/s

Versus

Santosh Kumar Singh & Ors

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajeev Kumar Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

5 07-08-2017 (1) Heard the learned senior counsel, Mr. T.N.Maitin for the petitioner and the learned counsel, Mr. Gopal Govind Mishra for the respondent Nos.3 and 4. In spite of notice, the respondent Nos.1 and 2 have not appeared.

(2) This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 21.02.2012 passed by the learned Sub Judge I, Bhojpur at Ara in Title Suit No.428 of 2008 whereby the learned court below has directed that the petitioner be added as defendant in the suit.

(3) It appears that the mother of the petitioner and respondent Nos.3 and 4 namely Raj Kalo Devi filed the aforesaid Title Suit No.428 of 2008 praying for declaration that the gift deed alleged to have been executed by her in favour of respondent Nos.1 and 2 dated 15.07.2008 is null and void. During pendency of the suit, Raj Kalo Devi, the mother of three sisters i.e. petitioner

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and respondent Nos.3 and 4 died. The present petitioner filed application for being substituted in place of Raj Kalo Devi plaintiff and subsequently two other sisters of the petitioner i.e. respondent Nos.3 and 4 also filed application for being substituted in place of the deceased Raj Kalo Devi. The learned court below by the impugned order held that the petitioner be added as defendant in the suit and the respondent No.3 and 4 be added as plaintiff in the suit.

(4) The learned senior counsel, Mr. T.N.Maitin for the petitioner submitted that when mother of the petitioner died leaving behind three daughters, after the death of mother, all the three sisters should have been added as plaintiff irrespective of their inter se dispute but the court below by the impugned order directed that the petitioner be added as defendant on the basis of the statement made in the application which is not permissible under the law, therefore, the court below acted in the manner not permitted by law and exceeded his jurisdiction.

(5) On the other hand, the learned counsel, Mr. Mishra appearing on behalf of the respondent vehemently opposed and submitted that the case of the petitioner is contrary to the case made out by the mother, Raj Kalo Devi in the plaint and considered this aspect of the matter, the court below has rightly

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directed that she be added as defendant in the suit and moreover, no prejudice will be caused to the petitioner if she is added as party-defendant in the suit. The learned counsel, therefore, on the question of jurisdiction of the High Court under Article 227 of the Constitution relied upon various decisions of the Supreme Court such as: AIR 2014 Supreme Court 1615(Jacky v. Tiny alias Antony and Ors.), 2015(1) BBCJ 208(Md. Hasan v. Meena Devi), AIR 2000 Supreme Court 931(Mohan Amba Prasad Agnihotri and others v. Bhaskar Balwant Aher (Dead) through L.Rs,) and AIR 2012 Supreme Court (Suppl.) 605(Bandaru Satyanarayana v. Imadi Anasuya and Ors.).

(6) Perused the impugned order. It is admitted fact that Rajkalo Devi was the plaintiff. She died leaving behind three daughters. The petitioner and the respondent Nos.3 and 4 are the daughters. From perusal of the impugned order, it appears that there is dispute between three daughters. The present petitioner is claiming entire property on the ground that the mother had executed Will in her favour whereas according to other two sisters, no Will has been executed and they have also got equal share in the property of Raj Kalo Devi which was her self-acquired property. It may be mentioned here that so far the suit is concerned, the relief claimed is that the deed of gift executed by

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Raj Kalo Devi in favour of defendant-respondent Nos.1 and 2 is null and void. Therefore, this question is to be decided whether the deed is null or void or not. So far the dispute inter se between the three daughters are concerned, that cannot be decided in the present suit, therefore, there is no question of directing one sister to be added as party-defendant and other two sisters to be added as plaintiff in place of Raj Kalo Devi. Their inter se dispute can be resolved by separate suit and not in this suit.

(7) As stated above, from perusal of the impugned order, it appears that the court below has considered the claim of the sisters made in the application for being substituted in place of Raj Kalo Devi and then directed that the petitioner be added as party-defendant holding that Will is genuine or not and the gift deed is genuine or not will be decided in the suit whereas according to law, the genuineness of the Will cannot be decided in the present suit because there is no such relief in the plaint.

(8) So far the decisions relied upon by the learned counsel for the respondents are concerned, there is no dispute about the settled principles of law held by the Patna High Court as well as by the Supreme Court but in the present case, admittedly, three sisters filed the application for being substituted in place of Raj Kalo Devi who was their mother. Therefore, the court below

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has approached the case in wrong angle and has wrongly directed that one of them should be added as defendant. Thus, the court below passed the impugned order in the manner not permitted by law and thus, the impugned order passed by the court below dated 21.02.2012 in Title Suit No.428 of 2008 by the learned Sub Judge I, Bhojpur, Ara is hereby set aside and it is directed that all three sisters be substituted as plaintiff in place of Raj Kalo Devi. The court below then proceed to decide the suit on merit.

(9) Thus, this writ application is allowed.

(Mungeshwar Sahoo, J)

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