

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11780 of 2012

=====

Smt. Uma Devi W/O Sri Omprakash Singh R/O Village- Damrichak, Police
Station- Dhanarua, District- Patna. Petitioner/s

Versus

1. Most. Shital Kuer Widow Of Late Jeev Nandan Singh R/O Village-
Damarichak, Police Station- Dhanarua, District- Patna
2. Sakaldeo Prasad Singh S/O Late Brahmdeo Singh R/O Village- Damari Chak,
Police Station- Dhanarna, District- Patna
3. Urmila Devi W/O Jai Prakash Singh R/O Ramgar Mali, Police Station- Karpi,
District- Jehanabad
4. Prem Kumar the Alleged Minor S/O Most. Shital Kuer the Minor under the
Guardianship of His Adoptive Mother Namely Most. Shital Kuer, R/O Village-
Damrichak, Police Station- Dhanarua, District- Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. KAMLESH KUMAR SHARMA
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-02-2017

Heard Mr. Kundan Bahadur Singh, learned counsel for the
petitioner and Mr. Jaiswal, learned counsel for the respondents.

The facts are not in dispute that one Sublal Singh had two
sons Deonandan Singh and Jeevnandan Singh and one daughter
Yashiya Devi. It is also not in dispute that both the above sons of
Sublal Singh died issueless but left behind their widows namely Tijiya
Devi and Shital Devi. Tijiya Devi, widow of Deonandan Singh, is said
to have executed a will in favour of the plaintiff-petitioner.



Accordingly, the proceeding for grant of probate or letters of administration bearing T.S. No. 03 of 2005 has been initiated on the petition filed by the plaintiff-petitioner. In that proceeding, Shital Devi, who is widow Jeevnandan Singh, has been impleaded as defendant no. 1, and the descendants of Yashiya Devi, daughter of Sublal Singh, have also been impleaded as defendant nos. 2 and 3. During the pendency of the proceeding/suit, a petition was filed by the respondent no. 4 for his impleadment as party defendant. By the impugned order, the learned court below has allowed the prayer of the respondent no. 4.

Mr. Singh, learned counsel for the petitioner has submitted that even after accepting the fact that the respondent no. 4 has been adopted on 25.09.2008 by the defendant no. 1 Shital Devi as son, he cannot have a caveatable interest in the estate left behind by Tijiya Devi and as such in view of the provisions of the Indian Succession Act i.e. 286 and 287 as well as the law laid down by the Apex Court in the case of **Krishna Kumar Birla Vs. Rajendra Singh Lodha, 2008 (4) SCC 300** the respondent no. 4 could not have been impleaded as intervenor-defendant in the suit.

Learned counsel appearing on behalf of the respondent nos. 1 to 4 however, has supported the impugned order but has not denied the fact that the adoption of the respondent no. 4 as son by



Shital Devi was made on 25.09.2008.

After considering the submissions, materials on record as well as the impugned order, it is manifest that the respondent no. 4 has been introduced in the family only on 25.09.2008 whereas the will is said to have been executed by Tijiya Devi in the year 2003 and the death of Tijiya Devi has also occurred prior on 25.09.2008. As the adoptee mother of respondent no. 4 namely Shital Devi is present as defendant no. 1 in the proceeding, this Court aligns with the submissions made on behalf of the petitioner that the respondent no. 4 cannot have any interest in the property left behind by Tijiya Devi. In view of the principle as laid down in the case of **Krishna Kumar Birla** (supra), this Court comes to the conclusion that the impugned order passed by the learned court below allowing the prayer on behalf of the respondent no. 4 for his impleadment as intervenor-defendant is not in accordance with law.

In view of the aforesaid reasons and discussions this application succeeds. The impugned order dated 23.05.2012 passed by the learned Additional District Judge, IX, Patna is accordingly, quashed.

Devendra/-

(V. Nath, J.)

AFR/NAFR	
CAV DATE	
Uploading Date	22.03.2017
Transmission Date	

