

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.142 of 2017**

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Surendra Prasad Singh @ Surendra Prasad

.... Petitioner/s

Versus

Ajay Mahto & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 31-01-2017 Heard the learned senior counsel, Mr. Dhruv Narain for
the petitioner.

Perused the impugned order dated 26.09.2016 passed
by 7th Additional District Judge, Gaya in Revocation Case No.11
of 2015 whereby the learned court below has added the intervenor
as party in place of the deceased sole applicant, Phulbanti Devi.

It appears that the respondent filed probate case which
was allowed and probate was granted. Phulbanti Devi filed
Revocation Case No.11 of 2015 under Section 263 of the Indian
Succession Act on the ground that the executant of the alleged
Will was not executed by the husband of Phulbanti Devi. The said
Will was a fabricated Will. She is the only heir of Chamari Mahto,
her husband. The petitioner got the Will probated by playing
fraud. It appears that during the pendency of this revocation case,
she died. The intervenors filed application for being



added/substituted in place of the deceased on the ground that Phulbanti Devi had sold some property covered under Will and has also gifted some property covered under Will. By the impugned order, the court below has allowed this application and added the interveners as party in the revocation case.

The learned senior counsel, Mr. Dhruv Narain appearing for the petitioner relied upon the decision of the Supreme Court, (2008) 4 Supreme Court Cases 300(Krishna Kumar Birla vs. Rajendra Singh Lodha and Ors.) and submitted that a person who has no caveatable interest cannot be added as party. The learned counsel further submitted that Phulbanti Devi was a party in the probate case but in spite of service of notice, she did not appear in the probate case and did not contest the probate case. Therefore, in view of the above fact, the revocation itself is not maintainable and she was a party and no fraud was played on her or on the court.

The learned senior counsel further submitted that in view of the above facts and circumstances of the case, the provision as contained in Section 263 of the Indian Succession Act itself is not maintainable. The learned senior counsel further submitted that on the date of grant of probate, the right, title and interest of the property in Will devolve on the petitioner and,



therefore, thereafter the applicant i.e. Phulbanti Devi, who was filed the application under Section 263 of the Indian Succession Act, had no right to sell or gift the property covered under the Will.

All the submissions made by the learned senior counsel in the present case as stated above are the questions on merit in the revocation case. Admittedly, Phulbanti Devi had filed the revocation case. She has admittedly died. The interveners claimed that they have purchased the property from Phulbanti Devi or she had donated the same. Therefore, the interveners are the legal representatives of Phulbanti Devi. In such circumstances, they have been added as party and they have stepped into the shoe of Phulbanti Devi and have got right to maintain revocation case. Whether revocation case will be dismissed or that Phulbanti Devi had no right to sell the property or gift the property or that the purchasers have got no caveatable interest in the probate case are concerned, those are questions on merit.

So far the decision relied upon by the learned senior counsel is concerned, it relates to the addition of party in a probate case. In the present case, the application is under Section 263 of the Indian Succession Act and admittedly, the widow of the executant has filed the revocation case.



Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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