

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1077 of 2016

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1. Diwakar Kumar Ghoshal son of Late Dinesh Chand Ghoshal resident of Mohalla - Champa Nagar, P.S. - Nath Nagar, District - Bhagalpur
.... Petitioner

Versus

1. Subodh Kumar Mishra Son of Sri Sudarshan Mishra resident of Mohalla - Deep Nagar, Chiranjivi, Bose Lane P.S. - Kotwali, Town & District – Bhagalpur
.... Respondent

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Appearance :

For the Petitioner : Mr. Anupa Nand Jha, Adv.

For the Respondent : Mr. Dr. Manoj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

4 08-12-2017 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order, dated 07.06.2016, passed in Probate Case No. 36 of 2001.

The petitioner, Diwakar Kumar Ghoshal, filed a petition under Order 1 Rule 10 read with Section 151 of the Civil Procedure Code to implead him as intervener defendant in Probate Case No. 36 of 2001. The case of the petitioner is that Manindra Nath Mishra and father of the petitioner were running a partnership business in the name and style of “Jai Shankar Dresses” in shop no. 2. The owner of shop no. 2 sold the shop in favour of Dinesh Chandra Ghoshal, father of the petitioner. Title Suit No. 107 of 1995 was filed for dissolution of partnership firm and the same is still pending. Manindra Nath Mishra had no manner of concern with shop no. 2. Manindra Nath Mishra earlier filed injunction petition, but, the same was rejected. Manindra Nath Mishra, again, filed Miscellaneous Appeal No. 27 of 1999 against the order rejecting injunction. The Miscellaneous Appeal



was also dismissed. Manindra Nath Mishra executed a will and included shop no. 2 in the will, therefore, the petitioner is a necessary party in the Probate Case and the learned Additional District Judge had illegally rejected the petition of the petitioner to be impleaded as party objector. Against the aforesaid order the petitioner preferred this civil miscellaneous petition and assailed the order, impugned, on the ground that the learned Additional District Judge committed material irregularity by not allowing the petitioner to be impleaded as opposite party.

On the other hand, the learned counsel for the respondent submitted that petitioner is not related to the propounder of the will. Manindra Nath Mishra executed will of his own property and business and bequeathed the same in favour of Subodh Kumar Mishra, respondent. The respondent filed Probate Case for issuance of letter of administration. In the Probate Case genuineness of the signature of propounder of the will is to be testified. The petitioner is not, at all, interested in the Probate Case.

The learned counsel for the petitioner has placed reliance **2009(2) P.L.J.R., 485 (Saroj Devi Vrs. Smt. Shanti Mishra).**

Having considered the submissions of the parties, it is evident that Subodh Kumar Mishra filed a case for issuance of letter of administration with regard to the property of Manindra Nath Mishra for which Manindra Nath Mishra executed a will before his death. Dinesh Chandra Ghoshal, father of the petitioner and Manindra Nath Mishra were running a partnership business in the name and style of “Jai Shanker Dresses”. Father of the petitioner purchased shop no. 2 in which partnership business was



going on. The owner of the shop through a registered deed sold the shop, but, the shop in question is not subject matter of the suit rather partnership business is one of the subject matters of Title Suit No. 107 of 1995. Therefore, I find that the petitioner has no business to object the letter of administration with regard to the property of the propounder of the will.

Having considered the facts, aforesaid, I find that there is no jurisdictional error and material irregularity in the order of the learned Additional District Judge passed in Probate Case No. 36 of 2001.

Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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