

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.375 of 2017

1. Prakash Bishwakarma.
2. Ram Bilash Sharma.
3. Subhash Bishwakarma. All are sons of Late Dina Bishwakarma, Resident of Village- Tardih, P.O.- Rupsa, P.S. and Anchal- Amarpur, District- Banka.

... .. Appellant/s

Versus

1. Rani Devi, Daughter of Dina Bishwakarma, Wife of Dhrub Sharma, Resident of Village- Longain, P.O.- Logain, P.S. and Anchal- Amarpur, District- Banka.
2. Suraj Bishwakarma @ Mritunjay Bishwakarma, Son of Panchu Bishwakarma, Resident of Village- Tardih, P.O.- Rupsa, P.S. and Anchal- Amarpur, District- Banka.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dharendra Nath Jha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 13-09-2017 Heard learned counsel for the parties.

The petitioners are aggrieved by an order, dated 27.01.2017, passed by the learned Adhoc Additional District Judge, Ist, Banka in Probate Case No. 04. of 2015, whereby he has allowed an intervention application filed by Respondent No.2 under Order I Rule 10(2) of the Code of Civil Procedure, 1908.

The said Respondent No.2 is the brother of the wife of the testator. His application for intervention has been allowed on his plea that he is the adopted son of the testator.

Learned counsel appearing on behalf of the petitioners,



assailing the impugned order, has submitted that respondent No.2 could not have been impleaded as respondent in probate proceeding since he is neither necessary nor a proper party. He has also submitted that the respondent No.2 has claimed adoption on the basis of unregistered document and, therefore, he should not have been allowed to intervene.

Whether the adoption of respondent No.2 is genuine or not can be decided in appropriate proceeding. Before the Court below, in the concerned probate proceeding, the genuineness of the will is the only question, which is to be adjudicated upon. In such circumstance, the impleadment of respondent No.2 in the probate proceeding cannot be said to be prejudicing the case of the petitioners in any manner.

No case for exercise of power under Article 227 of the Constitution of India is made out.

This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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