

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.557 of 2016

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1. Namita Kumari D/o late Hare Ram Choudhary, Wife of Ram Sagar Jha, Resident of Village Panchgama, P.O. and P.S. Rosera, District- Samastipur.
 2. Durga Kumari D/o late Hare Ram Choudhary All Resident of Village- Asinchak, P.S. Dalsingsarai, District- Samastipur.
 3. Sonu Kumar All (ii) to (vii) Sons of late Hareram choudhary
 4. Devendra Kumar
 5. Sunita Devi Wife of late Hare Ram Choudhary
 6. Sachindra Kumar
 7. Gitendra Kumar @ Gitendra Kumar Choudhary
 8. Jitendra Kumar @ Jitendra Kumar Choudhary
 9. Ravindra Kumar

.... Petitioners

Versus

1. Biro Kumar
2. Prem Kumar Sons of Late Surjdeo Kumar, previously residents of Village and P.O. Pirhulli, P.S. Taghara, District- Begusarai, presently residing in Village- Harishankarpur @ Ashinchak, P.O. Ashinchak, District- Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Subhash Chandra Bose

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 04-04-2018

Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 07.04.2016 passed in Probate Case No.12 of 2007 by Additional District Judge-IV, Samastipur, whereby, the petition of the petitioners under Order 1 Rule 10 of the C.P.C. for his impleadment in the Probate case has been dismissed.

Learned counsel for the petitioners submits that Babulal Choudhary is the executant of the will in favour of Doman Kunwar.



The petitioner Babulal Choudhary is son of Ram Swarup Choudhary. Bhonu Choudhary got two sons namely Bitai Choudhary and Ram Swarup Choudhary. Bitai Choudhary got three sons namely Ramashrai Choudhary, Ram Gulam Choudhary and Ram Narayan Choudhary. Ram Gulam Choudhary died issueless. The petitioner Hare Ram Choudhary is son of Ramashrai Choudhary. If the will is found to be forged and fabricated, the petitioners are entitled to inherit the property of Babulal Choudhary. According to contention of the petitioners, Babulal Choudhary never executed any will and that is why he wanted to be impleaded as party in the Probate Case but this petition has illegally been dismissed on the ground that the petitioners filed T.S. No.64/2007 for declaration that aforesaid will is forged and fabricated.

Admittedly, the petitioners earlier filed T.S. No.64/2007 for declaration of the will to be forged and fabricated. Thereafter Doman Kunwar filed Probate Case No.12/2007, which is said to have been executed in the year 1965 by Babulal Choudhary. Doman Kunwar earlier filed Probate Case No.14 of 1977 before the District Judge, Darbhanga. After creation of Samastipur, Probate Case No.14 of 1977 was transferred to the Judgeship of Samastipur but later on the aforesaid Probate Case No.14 of 1977 was dismissed for default. Doman Kunwar kept quiet and when the petitioners filed suit, Doman



Kunwar filed the present Probate case No.12 of 2007. The petitioners belong to the family of executant, and therefore, I find that the petitioners have got right to object the Probate will. I find that the Additional District Judge-IV, Samastipur has committed jurisdictional error by rejecting the petition of the petitioner on the ground that since the petitioners filed suit for declaration of the will to be forged and fabricated, they are not required to be heard in Probate case.

Accordingly, the order dated 07.04.2016 is set aside and the Civil Miscellaneous petition is allowed. The petitioners, who are legal heirs of Hare Ram Choudhary are allowed to contest the Probate case.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018
Transmission Date	NA

