

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7374 of 2013

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1. Raj Roshni Devi Wife of Sidhnath Pathak, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Distt. Buxar
 2. Lallan Kumar Pathak Son of Sidhnath Pathak, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Distt. Buxar.

.... Petitioner/s

Versus

1. Lal Babu Tiwari Son of Late Ramayan Tiwari, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Dist. Buxar, Presently Residing At village Baraki Basauli, P.S. Buxar Industrial, Distt. Buxar
2. Nagendra Tiwari Son of Late Ramayan Tiwari, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Dist. Buxar, Presently Residing At village Baraki Basauli, P.S. Buxar Industrial, Distt. Buxar
3. Birendra Tiwari Son of Late Ramayan Tiwari, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Dist. Buxar, Presently Residing At village Baraki Basauli, P.S. Buxar Industrial, Distt. Buxar
4. Arjun Pathak Son of Sidhnath Pathak, resident of village - Orri, P.O. Mahela, P.S. Itarhi, Dist. Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. K.N. Choubey, Sr. Advocate
	:	M/s Ashok Kr. Garg, Dineshwar Pandey and Prashant Kumar, Advs.
For the Respondent/s		Mr. Nirmal Kr. Srivastava, Advocate
		Mr. Nagendra Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-01-2018

This application has been filed to set aside the order dated 08.11.2012 passed by the learned Sub Judge-I, Buxar in Probate Case No. 9 of 2011. The Court below, as per impugned order, impleaded the intervenor-respondents as party to the said probate case and referred the case record to the District Judge for further proceeding.



2. Heard learned counsels for the petitioners as well as the respondents.

3. The petitioners before this Court are applicants of Probate Case No. 9 of 2011. They filed the said probate case for grant of probate with respect to the property left by deceased Most. Indrasani Kuer who executed a registered Will in favour of the petitioners.

4. The learned counsel for the petitioners submits that the intervenors have no caveatable right to intervene the probate proceeding. The probate case has been filed with respect to the estate of deceased. The probate court is only concerned with adjudication as to whether the Will propounded by the petitioners is the last Will and testament of deceased person and whether at the time of such execution, the testator was in sound mind. The question whether the bequest is good or bad is not within the purview of the probate court. The intervenors are claiming title and also challenging the genuineness of the Will in question. The intervenor has filed a T.S. No. 136 of 1996 against the petitioners with respect to the property which is also subject matter of probate case and so the Court below has erred in impleading the intervenor as party to the suit.

5. The learned counsel for the respondents on the other hand submits that the Will in question is forged and fabricated. The



deceased Most. Indrasani Kuer had already transferred the land which is also subject matter of probate case, in favour of the father of the petitioners. She had not right to execute the Will in question. The said Will has been brought into existence only to grab the land of the petitioners which has been duly transferred by the deceased and so the Court below has rightly impleaded the respondents as party to the suit to watch their interest.

6. On perusal of documents annexed with the writ application as well as counter affidavit, I find that the deceased Most. Indrasani Kuer had executed sale deed on 30.07.1960 in favour of one Ramayan Tiwari who was father of the respondents. After execution of said sale deed, a proceeding under section 145 Cr.PC. was initiated. The said proceeding was decided in favour of father of petitioners and he was declared to be in physical possession of the land. During the revisional survey proceeding, the said land was recorded in the name of father of respondents. The deceased Most. Indrasani Kuer, who was vendor of the respondents, executed a sale deed with respect to 2.55 decimal land in favour of father of respondents on 30.07.1960. The respondents have alleged that after execution of sale deed she had no right to execute the Will in favour of the petitioners and the same has been brought into existence fraudulently in order to defeat the right of the respondents. The Court below considering the caveatable right of



the respondents, has allowed the intervenor petition and impleaded them as opposite party. The petitioners being purchaser from deceased, have valid right to protect interest.

7. Thus in view of above facts, I find that the Court below has not committed any jurisdictional error in impleading the respondents as party to the probate proceeding.

8. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.01.2018
Transmission Date	

