

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1560 of 2011

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Bhola Singh S/o Late Hridya Narain Singh, R/o village-Bairy, Post Office-Gehuan,
Police Station-Chand, District-Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. General Public (Opposite Party No-1)
2. Devendra Pratap Singh S/o Birendra Bahadur Singh @ Hira Prasad Singh, R/o village-Bairy, Post Office- Gehuan, Police Station- Chand, District-Kaimur (Bhabhua)
3. Birendra Bahadur Singh @ Hira Prasad Singh S/o Late Hridya Narain Singh R/o village- Bairy, Post Office- Gehuan, Police Station- Chand, District- Kaimur.
4. Dr. Kanhaiya Singh S/o Late Hridya Narain Singh, R/o village- Bairy, Post Office- Gehuan, Police Station- Chand, District- Kaimur.
5. Vinod Kumar Singh S/o Late Vijay Narain Singh, R/o village- Bairy, Post Office- Gehuan, Police Station- Chand, District- Kaimur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Singh, Adv.

For the Respondent/s : M/s Amiya Kunal and Saket Tiwary, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-03-2018

This application has been filed for quashing the order dated 31.08.2010 passed by the Additional District Judge, Fast Track Court-III, Kaimur in Probate Case No. 49 of 2006 /26 of 2009.

2. Heard learned counsels for the petitioner and the respondents.

3. The respondent no. 2 filed the aforesaid Probate Case No. 49 of 2006/26 of 2009 on the file of learned District Judge against the petitioner and other respondents. The defendant appeared and filed written statement on 02.12.2008 and a petition to accept the written



statement. The prayer of the petitioner was rejected on 18.04.2008. Thereafter, the petitioner filed Civil Revision No. 521 of 2009 which after hearing was disposed of with an observation of giving liberty to the defendant to file a fresh application for recalling the said order and for acceptance of written statement.

4. From the order of lower court, it appears that the opposite party no. 3, who is petitioner before this Court, filed written statement on 28.06.2010 and a petition supported with an affidavit.

5. It has been submitted that the petitioner has challenged the genuineness of Will and after filing of petition by the petitioner, the matter became contentious and so in view of provision of section 295 of the Indian Succession Act, the probate case is required to be registered as title suit and to be decided by the District Judge. The learned Additional District Judge did not entertain the said application and fixed the case for hearing.

6. The learned counsel for the respondents on the other hand submits that the court below has not applied its judicial mind after filing of written statement and so at this stage it cannot be said that the matter has become contentious. The court below has not committed any illegality in proceeding with this case.

7. On perusal of order sheet, which is annexed with this application, I find that the opposite party has filed written statement



and a petition on the same day to send the record to the court of District Judge for contentious trial. There is nothing on record to show that after filing of written statement, the matter has become contentious. The court below has not framed issue and so it can't be said that the matter has become contentious.

8. In view of above facts, I do not find any illegality in the impugned order. This application is accordingly disposed of with an observation that after entering into the merit of the case if the court finds that the matter has become contentious, it is at liberty to proceed with the case as per provision of section 295 of the Indian Succession Act.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/03/2018
Transmission Date	

