

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20871 of 2014

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1. Smt. Sulochna Gupta W/o Late Vinay Prakash Gupta
 2. Smt. Dauli Gupta, W/o Sri Bhanu Prakash Gupta
 3. Smt. Anita Gupta W/o Sri Anand Prakash Gupta, All resident of Pethia Bazar, P.O. and P.S. Phulwari Sharif, Distt.- Patna

.... Petitioner/s

Versus

1. Prem Parkash Gupta
2. Amar Prakash Gupta
3. Shanti Prakash Gupta All sons of late Sri Chand Prakash Gupta, resident of Pethia Bazar, P.O. and P.S. Phulwari Sharif, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Namrata Mishra, Advocate Mrs. Archana Jha, Advocate Mrs. Anamika, Advocate
For the Respondent/s	:	Mr. N.C.Verma, Advocate Mr. Natraj Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 11-09-2018

Petitioners before this Court are plaintiffs of Title Suit No.20 of 2005 pending in the Court of Adhoc Additional District Judge-VI, Patna. They have filed this application for quashing the order dated 21.08.2014 whereby and whereunder their prayer to amend the pleading of probate application was refused.

2. Heard learned counsel for the petitioners and the respondents.

3. It appears that the petitioners filed Probate Case No.150 of 2004 on the file of District Judge, Patna. The Opposite Parties appeared and filed objection denying the genuineness of the Will in



question. Accordingly, the said probate case was converted into Title Suit and it was registered as Title Suit No.20 of 2005. The petitioners in the light of objection of respondents to this effect that the deceased Sri Chand Prasad was a literate person and he had signed cheques in his own pen on 01.04.2004 and 24.05.2004, i.e., subsequent to the date of execution of alleged will dated 30.03.2004. The said will contains thumb impression of the deceased which creates doubt on its genuineness. The petitioners in view of objection of the defendants/respondents filed amendment petition to add one more para as para-3A which runs as follows:-

“That deceased Sri Chand Prasad who executed the Will deed on 30.03.2004 suffering from ailments was in habit to put his signature on cheques prior to his ailment when he became handicapped to put his signature.”

4. The petitioners have not denied the assertion of the respondents that the deceased Sri Chand Prasad was literate person. The case is at initial stage of hearing as the parties have not examined any witness. The genuineness of Will has to be tested by oral and documentary evidence at the time of trial and so the proposed amendment do not change the nature of the suit.

5. In view of above discussions, the impugned order is set aside and amendment is allowed subject to payment of cost of Rs.5,000/- to the contesting respondents. The contesting respondents



shall be at liberty to file additional written statement.

6. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.09.2018
Transmission Date	N/A

