

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1003 of 2016

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Sanjhiya Devi wife of Hira Sah

.... Appellant

Versus

1. Umesh Sharma
 2. Ganesh Sharma
 3. Ranjit Sharma
 4. Manju Devi W/o Birendra Tatma
 5. Dinesh Sharma
- Respondents 1st set
..... Respondent 2nd set
- =====

Appearance :

For the Appellant/s : Mr. Pramod Kumar Mallick
For the Respondent 1st set : Mr. Rashid Izjar
For the Respondent 2nd set : Mr. Rajesh Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 31-08-2018

Heard the learned counsel for the petitioner, the learned counsel for the respondent 1st set and the learned counsel for the respondent 2nd set.

The petitioner is the intervenor. The petitioner filed this Civil Misc. petition against the order dated 14.06.2016 passed by the learned Sub Judge, Banmankhi in Title Suit No. 192 of 2002 by which the petition of the petitioner filed under Order I Rule 10 of the Code of Civil Procedure for impleading her as defendant in the case has been rejected.

The learned counsel for the petitioner submits that the plaintiffs filed the suit for declaration of the deed of gift executed by Rameshwar Sharma @ Rameshwar Tatma in favour of Dinesh Sharma, respondent 2nd set on 12.01.2000 is false, fabricated and collusive. When the petitioner came to know the fact that the plaintiffs have stated in the plaint that Rameshwar Sharma @ Rameshwar Tatma died issueless and he is said to have executed a registered deed of gift in favour of Dinesh Sharma, the petitioner filed petition stating



that she is daughter of daughter of Rameshwar Sharma @ Rameshwar Tatma. Rameshwar Sharma @ Rameshwar Tatma did not die issueless. Plaintiffs are the sons of brother of Rameshwar Sharma @ Rameshwar Tatma. The donee is not at all related to the family of the maternal grand father of the petitioner. The petitioner as maternal grand daughter of Rameshwar Sharma @ Rameshwar Tatma is a necessary party in the suit but the learned Sub Judge without taking into consideration that the petitioner being grand daughter of Rameshwar Sharma @ Rameshwar Tatma, the donor of the alleged gift deed, is a necessary party illegally rejected the petition.

On the other hand, the learned counsel for the respondent 1st set/plaintiffs submitted that the suit is at the fag end. If the suit is allowed, the petitioner would get her share in the property. Even the donee, Rameshwar Sharma @ Rameshwar Tatma, stated in the gift deed that he got no issue. Therefore, this fact is not proved and there is no evidence to this effect that the petitioner is the daughter of daughter of Rameshwar Sharma @ Rameshwar Tatma.

Having considered the facts and the submission of both sides and on perusal of records, I find that the petitioner filed petition for being impleaded her as defendant in the suit claiming herself to be the grand daughter of Rameshwar Sharma @ Rameshwar Tatma. The petitioner also filed a genealogical table duly issued by Circle Officer Banmankhi. According to the genealogical table it appears that Rameshwar Sharma @ Rameshwar Tatma got one daughter, namely, Tariya Devi, who married to Chhatar Sharma. Rameshwar Sharma died leaving behind one daughter Tariya Devi. Tariya Devi got one daughter, namely Sanjhiya Devi. It appears that the petitioner has got direct interest in the suit property and, therefore, she is a necessary party in the suit. Having considered the facts, I find that the learned



Sub Judge has committed jurisdictional error in dismissing the petition of the petitioner. Consequently, the order dated 14.06.2016 passed by the learned Sub Judge, Banmankhi in Title Suit No. 192 of 2002 is set aside and the petitioner is allowed to be impleaded as defendant in the suit and thus this Civil Misc. petition is allowed

(Prabhat Kumar Jha, J)

BKS/Rajan

AFR/NAFR	NAFR
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