

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.887 of 2017

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1. Ram Lakhan Rai Son of Late Raghubir Rai
2. Nand Lal Rai Son of Shri Ram Lakhan Rai Both are resident of Village-
Pachpokhariya, Tola-Korminiya, P.S.-Adapur, presently Mahuawa, P.S.-
Tikuliya, District- East Champaran

.... Appellant/s

Versus

1. Yogendra Rai Son of Late Arjun Rai Resident of Village-Pachpokhariya,
Tola-Korminiya, P.S.-Adapur, presently Mahuawa, P.S.- Tikuliya, District-
East Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Shri Prakash Srivastava & Santosh Bharti
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 05-10-2018 Heard Shri Prakash Srivastava, the learned counsel
for the petitioners.

The petitioners have filed this Civil Misc. petition against the order dated 27.01.2017 passed in Title Appeal No. 35 of 2003 by which the learned Additional District Judge-VII, East Champaran, Motihari allowed the petition of Yogendra Rai, the sole respondent, to implead him as appellant to pursue the Title Appeal.

The learned counsel for the petitioner submits that Lagni Devi filed suit for partition of property but the trial court held that Lagni Devi was not a member of joint family and she is not entitled to get any share in the joint family property and,



accordingly, dismissed the suit. Lagni Devi filed Title Appeal No. 35 of 2013. It is submitted that it was Yogendra Rai, sole respondent, who was instrumental and instigated Lagni Devi to file the suit. After death of Lagni Devi, Yogendra Rai filed petition to substitute him in place of Lagni Devi by virtue of deed of will executed by Lagni Devi but the will has not been probated and until and unless the will is probated, Yogendra Rai cannot be impleaded in the suit in place of Lagni Devi but I do not find any force in the submission of learned counsel for the petitioners. Even the legatee of unprobated will can be impleaded in place of propounder of will in a suit to protect the interest of propounder of the will in the suit/ appeal.

Having considered the facts aforesaid, I do not find any merit in this Civil Misc. petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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