

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.347 of 2017

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1. Rati Kant Chaudhary, Son of Ram Gulam Chaudhary,
 2. Mani Shankar Chaudhary, Son of Ram Chandra Chaudhary,
 3. Ram Sogarath Chaudhary, Son of Rameshwar Chaudhary, All are resident of Village- Bandhupatti (Chahuta), P.S.- Bisfi, District- Madhubani.

.... Petitioners

Versus

Ratan Pathak, Son of Late Laxman Pathak, Resident of Village- Ranti, P.S.- Raj Nagar, District- Madhubani.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Manoj Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 24-08-2018 Heard both sides.

The petitioners have filed this civil miscellaneous petition against the order dated 30.09.2018 passed by learned 1st Additional District Judge, Madhubani in Probate Case No.14/97 (Annexure-7) by which the petition of the petitioners filed under Order 1 Rule 10(2) of C.P.C. for adding them as defendants in the Probate Case No.14/1997 has been dismissed holding that the petitioners do not deserve to be impleaded as O.Ps.

The brief facts of the case is that the respondent Ratan Pathak who happens to be the son of brother of Pratima Chaudharain filed Probate Case No.14/97 for probate of will of Pratima Chaudharain. The petitioners filed petition to be impleaded as defendants stating therein that the petitioners are



descendents of the sons of Manragi Chaudhary. Manragi Chaudhary got two sons namely Jhhoti Chaudhary and Bihari Chaudhary and one daughter namely Draupadi. Draupadi was married to Gopal Chaudhary and gave birth to a son namely Srinath Chaudhary but due to some unavoidable circumstance, she stayed at her Naihar. Srinath Chaudhary got two sons namely Ramphal Chaudhary and Ram Prakash Chaudhary. Pratima Chaudhary is wife of Ram Prakash Chaudhary. Ram Prakash Chaudhary died issueless. It is further submitted that there was partition among the grand sons of Manragi Chaudhary and sons of Jhhoti Chaudhary and Bihari Chaudhary. One portion of the land bearing Khewat No.11/5 remained joint out of which land of Khesra No. 2946, Area 85 decimals of Khata No.571 and Khesra No. 2403, area 2 katha 10 dhur of Khata No.501 in Khewat No.11/5 was given to Srinath Chaudhary, son of Draupadi for his maintenance. Pratima Chaudhary executed the deed of will with regard to the land given to Srinath Chaudhary for his maintenance. That is why the petitioners wanted to contest the suit as they have got caveatable right. No property was allotted to Draupadi or her son Srinath and Pratima Chaudhary has got no right to execute the will given to her father-in-law for his maintenance but the learned 1st Additional District Judge-I, Madhubani rejected the petition



holding that the petitioners could not be able to show the relations with Pratima Chaudhary.

Learned counsel for the petitioners submits that the petitioners filed Annexure-6 before the learned 1st Additional District Judge, Madhubani, which contains the argument along with genealogical table of Manragi Chaudhary.

On the other hand, learned counsel for the sole respondent submits that the order does not require any interference and the petitioners are not at all interested and got any right to oppose the will but I find from perusal of Annexure-6, which was filed before the court of Additional District Judge-I, Madhubani before hearing of the petition filed under Order 1 Rule 10(2) the genealogical table shows that Pratima Chaudhary is the wife of Ram Prakash Chaudhary and Ram Prakash Chaudhary is grand son of Draupadi. The petitioners are the descendents of the sons of Manragi Chaudhary and Pratima Chaudhary is the wife of a great grand son of Draupadi, the sole daughter of Manragi Chaudhary. Therefore, I find that the learned 1st Additional District Judge, Madhubani has committed jurisdictional error by not allowing the petitioners to be impleaded as O.Ps in order to file objection with regard to genuineness of the will executed by Pratima Chaudhary on the ground that the petitioners are not at



all related any way with Pratima Chaudhary whereas the petition filed by the petitioners before the 1st Additional District Judge shows that Pratima Chaudhary is wife of grand son of Draupadi, the daughter of Manragi Chaudhary and petitioners are great grand sons of Manragi Chaudhary.

Accordingly, the order dated 30.09.2016 is set aside and the petitioners are directed to be impleaded as O.Ps in Probate Case No.14/1997.

This civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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