

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.305 of 2016

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1. Ram Pravesh Rai s/o - late Shyam Bihari Rai r/o - Village Narayanpur
Dedhpura, P.S. - Mahnar, District - Vaishali.

.... Appellant/s

Versus

1. Pramod Rai
2. Amod Rai
3. Anil Rai
4. Sunil Rai all 1 to 4 are s/o Arjun Rai
5. Arjun Rai s/o late Thagan Rai
6. Naresh Rai
7. Suresh Rai both s/o late Binda Rai
8. Bidusha Kuwar w/o late Binda Rai
9. Birendra Rai
10. Sajivan Rai
11. Rajendra Rai
12. Madan Rai, Akhilesh Rai
13. Kamlesh Rai all 9 to 13 s/o late Kedar Rai
14. Devender Rai s/o late Rajballabh Rai
15. Bindeshwar Rai
16. Sachindra Rai
17. Upendra Rai
18. Binod Rai all 15 to 17 s/o late Shyam Bihari Rai All 1 to 18 r/o village
Narayanpur Dedhpura, P.S. - Mahnar, District - Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amresh Kumar Sinha
For the Respondent/s : Mr. Natraj Verma, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 12-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition
against the order dated 22.01.2016 passed by learned 3rd
Additional District Judge, Vaishali at Hajipur in Probate Case No.
11 of 2013 by which the learned Additional District Judge rejected
the petition of the petitioner and others for adding them as



opposite parties in the Probate case.

The learned counsel for the petitioner submits that Chaturi Rai had six sons. Ram Sikil Rai, one of the sons of Chaturi Rai, died issueless in jointness and the lands of Ram Sikil Rai was inherited by his five brothers. Records of rights were accordingly prepared. According to the case of the applicant of Probate case No. 11 of 2013 Ram Sikil Rai was living with Arjun Rai, one of the sons of his brother, Thagan Rai. On account of love and affection Ram Sikil Rai executed a registered will in favour of Samful Devi, wife of Arjun Rai. Samful Devi died and her sons filed probate case. It is submitted that petitioner also belonged to the same family and he is entitled to be impleaded as opposite party in the probate case to file objection. Even the general citation is required to be issued to the petitioner as the petitioner belonged to the same family. It is further submitted that land of Ram Sikil Rai was recorded in the name of all his five brothers.

On the other hand the learned counsel for the respondent No. 1 to 4 submits that in a probate case the petitioner is not a necessary party.

Having considered the submission of both sides, I find that admittedly Ram Sikil Rai is the son of Chaturi Rai. Ram Sikil Rai died issueless. The records of rights were prepared in the



name of all six brothers. The petitioner is legal heir of brother of Ram Sikil Rai and he is entitled to file objection, if any, but the learned Additional District Judge erroneously rejected the petition of the petitioner holding that in probate case the petitioner is not required to be heard as only the genuineness of will is subject matter in the probate case but to appreciate the facts the petitioner and other respondents, who are legal heirs of same branch, are entitled to be noticed and they may object the probate of will. Thus, I find that the learned Additional District Judge has committed jurisdictional error in rejecting the petition of the petitioner. Accordingly, the order dated 22.01.2016 passed by learned 3rd Additional District Judge, Vaishali at Hajipur in Probate Case No. 11 of 2013 is set aside and the petitioner is allowed to be impleaded as opposite party in the probate case.

This Civil Misc. petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

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