

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9964 of 2010

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Shrikant Mishra Son Of Sarju Mishra, Resident Of Village- Barakagaon
Nagpura, P.S.- Simri, P.O.- Barka-Gaon, District- Buxar, Presently
Residing At Civil Lines Buxar, District- Buxar

.... Petitioner

Versus

1. Saraju Mishra @ Sarjug Mishra Son Of Late Laxmi Mishra Resident Of
Village- Barakgaon, P.S.- Simari, P.O.- Barakgaon, Dist.- Buxar.
2. Most. Bimla Devi W/O Late Yamuna Mishra, (Ii) Binod Mishra, (Iii)
Santosh Mishra, (Iv) Sarvajeet Mishra (V) Jitendra Mishra Sons Of Late
Yamuna Mishra All 2(I) To 2(V) Are Resident Of Village Barkagaon
Nagpura, P.S.- Simari, P.O.- Barkagaon, Dist.- Buxar
3. Balkeshri Devi Wife Of Late Parsuram Mishra, Resident Of Village-
Barakagaon Nagpura, P.S.- Simari, P.O.- Barkagaon, District- Buxar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Radha Mohan Pandey, Advocate
Mr. Balajee Pathak
Mr. Sweta Kumari

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

13 08-01-2018 This application has been filed to set aside the order

dated 18.03.2010 passed by learned Civil Judge, Senior Division-
I, Buxar in Title Suit No.182 of 2006 whereby and whereunder
the learned Civil Judge rejected the petition dated 06.07.2009 filed
by the petitioner for impleading him as plaintiff to the suit.

2. Heard learned counsel for the petitioners and perused
the record.

3. It appears that the original plaintiff Shiva Kant
Mishra filed a Title Suit No.182 of 2006 against the defendant for



partition of suit property. The plaintiff originally was son of defendant no.1. He on the strength of deed of adoption claimed property as son of Parshuram Mishra who was full brother of the father of defendant no.1. The original (sole) plaintiff Shiva Kant Mishra died. The defendant no.1 filed a petition for transposing himself in the category of plaintiff after deleting the name of Shiva Kant Mishra. The present petitioner who is son of defendant no.1 filed a petition for being impleaded as party to the suit under Order 1 Rule 10 of CPC. He claims the suit property by virtue of deed of will purported to be executed by deceased plaintiff Shiva Kant Mishra in his favour. From the averments made in the plaint which has been produced before this Court, it appears that the adoptive mother has denied the deed of adoption in favour of original plaintiff Shiva Kant Mishra. The present petitioner claims property by virtue of will which is un-probated. The present petitioner cannot derive better title or interest in the property than the original plaintiff. The claim of a original plaintiff has been challenged by the defendants. The court below while rejecting the petition of this petitioner has observed that the petitioner has not acquired any interest by virtue of will as the executor of will had not acquired any interest by virtue of deed of adoption which is being challenged by the adoptive mother. In such circumstance,



the petitioner's prayer for impleading him as party to the suit has rightly been rejected and as there was no one to pursue the suit, it was held abated.

4. In view of above fact, I do not find any illegality in the order refusing to implead the petitioner as party to the suit. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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