

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24479 of 2013

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Akhilesh Tiwari Adopted Son Of Kamta Tiwari (Wrongly Described As Ramparichhan Tiwari) Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran

.... Petitioner/s

Versus

1. Shailesh Tiwari Son Of Late Vishwanath Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
2. Sarvdaman Tiwari Son Of Late Vishwanath Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
3. Shatrumardan Tiwari Son Of Late Vishwanath Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
4. Balram Tiwari Son Of Late Harishankar Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
5. Santosh Tiwari Son Of Late Harishankar Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
6. Ashok Tiwari Son Of Late Harishankar Tiwari Resident Of Village- Chandraha Rupwalia, Tapa Manpur, P.S.- Bhatwalia, P.O.- Chandraha, District- East Champaran
7. Prabhunath Pathak Son Of Late Babunand Pathak Resident Of Village- Pipra, P.S.- Bathuari, District- West Champaran
8. Naresh Yadav Son Of Jugal Yadav Resident Of Bara Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
9. Ramesh Yadav Son Of Rajpat Yadav Resident Of Bara Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
10. Dukhi Yadav Son Of Naubat Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
11. Lalbabu Yadav Son Of Ramchandra Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
12. Manager Yadav Son Of Ramchandra Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
13. Yogi Yadav Son Of Ramchandra Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
14. Gopi Yadav Son Of Ramchandra Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
15. Jakuni Yadav Son Of Ramchandra Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
16. Jamadar Yadav Son Of Jiut Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
17. Shambhu Yadav Son Of Jiut Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
18. Swaroo Yadav Son Of Jiut Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
19. Ashok Yadav Son Of Jiut Yadav Resident Of Village- Chandrahas, P.S.- Chhatrane (Bachwania), District- East Champaran
20. Raj Kishore Prasad Jaiswal Son Of Chokat Sah Resident Of Village, P.O. & P.S.- Majhwalia, District- West Champaran
21. Kishori Yadav Son Of Payre Chand Yadav Resident Of Village- Chandraha



Pandey Tola, P.S.- Bhatwalia, District- West Champaran

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. S.S.Dewedi, Sr.Advocate
Mr. R.Chandra, Advocate
For the Respondent/s : Mr. Dhruv Narayan Sr. Advocate
Mr. Prabhat Kumar Dipak, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-05-2018

Heard both sides.

2. This application has been filed for setting aside the order dated 23.10.2013 passed by Ad hoc Additional District Judge-Ist, Bettiah, West Champaran in Title Suit No.09 of 2012, whereby and whereunder the learned court below substituted the respondent no.1 in place of appellant Rampati Devi and respondent nos.2 to 6 as respondent 3rd party under Order XXII Rule 3 read with order 1 Rule 10 of CPC. The appellant Rampati Devi (since dead) had filed Title Suit No.109 of 2007 for declaration that the deed of adoption dated 20.10.1997 purported to be executed by her husband Kamta Tiwari in favour of Akhilesh Tiwary (petitioner before this Court) as illegal forged and fabricated. The appellant Rampati Devi and her husband had no issue and so some persons fraudulently brought into existence a deed of adoption in order to grab her property. The suit was dismissed on contest and thereafter the plaintiff Rampati Devi filed Title Appeal No.109 of 2007. During the pendency of the appeal, Rampati Devi, sole appellant died. After her death, the contesting respondent Akhilesh Tiwary who is petitioner before this Court filed



a petition under Order 22 Rule 3 read with order 1 Rule 10 of the CPC for substituting the sole appellant. The intervenor defendant also filed a petition for substituting him as appellant, claiming interest in the property left by the appellant Rampati Devi. According to him, the said Rampati Devi had executed a registered deed of will on 25.01.2000 in his favour and some other legatee who have filed a probate case.

3. The learned counsel for the petitioner submits that the suit filed by original appellant was dismissed on contest. The court below decided the suit and gave a clear finding as regards the deed of adoption and so the said judgment is binding on all, until, set aside by a competent court. After dismissal of suit, the petitioner being son of appellant is entitled to be substituted in her place.

4. On the other hand learned counsel for the respondents submits that the intervenor-respondents acquired right and interest on the basis of will executed by the appellant on 25.01.2000. The present petitioner has already appeared in the said probate suit and the same is pending for adjudication. The Title Appeal No.09 of 2012 has been filed against the finding of trial court passed in Title Suit No.109 of 1997. The said suit was filed against the present petitioner for declaration of deed of adoption in his favour as forged and fabricated. The said suit was decided against Rampati Devi and being aggrieved by the said judgment and decree, she had filed the present appeal. The present petitioner is respondents in the said appeal having adverse



interest against the original appellant. The other respondents on the other hand are claiming interest on the basis of registered deed of will executed by deceased appellant Rampati Devi. The legatee has intervened before the court below and they claim to be legal representatives of the estate of deceased as defined in Section 2(11) of CPC. Their interest appears to be same as they are also assailing the findings of trial Court on the deed of adoption. The petitioner on the other hand had adverse interest against the deceased as he had contested the suit against the appellant. The court below considering the adverse interest of this petitioner has rightly refused to substitute him in place of appellant. He is already on record as respondent and is contesting the case against the appellant.

5. For the reasons stated above, I do not find any merit in the present application. This application is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

