

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.384 of 2017**

Smt. Punita Kumari Wife of Sri Shrawan Kumar of Village-Berawan, Post office-Amraura, P.S.-Tharthari, District-Nalanda

... .. Applicant/Plaintiff/Petitioner

Versus

1. The Estate of Late Chhotoo Mahto S/o Late Jagarnath Mahto of Village-Berawan P.O.-Amraura, P.S.-Tharthari, District-Nalanda
2. Ram Chandra Prasad
3. Jagdish Prasad Both Sons of Late Ganauri Mahto of Village Berawan, P.O. Amraura, P.S.Tharthari, District-Nalanda

... .. Respondent/s

**Appearance :**

|                    |   |                                  |
|--------------------|---|----------------------------------|
| For the Petitioner | : | Mr. J.S. Arora, Senior Advocate  |
|                    |   | Mr. Pratik Kumar Sinha, Advocate |
| For Res. No.2      | : | Mr. Vikash Kumar, Advocate       |
| For Res. No.3      | : | None                             |

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

4      10-12-2018                      Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of respondent no.2. In spite of having received notice, respondent no.3 did not appear.

The respondent no.3 contested Probate Case No.13 of 2009. The petitioner, legatee of the Will, filed the probate case for grant of probate. During pendency of the probate case, the petitioner filed petition that Chhotoo Mahto died on 14.04.2009. He executed Will on 13.10.2004 but after execution of the Will, he sold 8 decimals of land of Plot Nos.233 and 234 through a registered sale deed on 27.06.2005. Accordingly, the probate case was also filed with regard to plots but the petitioner felt that the testator had already sold those two plots before his



death, therefore, the two plots should be excluded from the Schedule of the petition but the learned VIth Additional District Judge, Nalanda, Bihar Sharif rejected the petition on the ground that the same would change the nature of the suit.

It appears that deletion of the two plots would not in any view of the matter change the nature of the suit as the testator of the Will sold the two plots measuring 8 decimals before his death but after execution of the Will, therefore, I find that the learned Additional Judge has committed jurisdictional error and illegality by rejecting the petition of the petitioner for amendment of the petition for deletion of the two plots.

Accordingly, the order dated 09.09.2016 is set aside. The amendment petition is allowed. This civil miscellaneous petition is accordingly allowed.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

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