

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1115 of 2018

=====

1. Chaitan Yadav, Son of Late Kauleshwar Yadav, Resident of Village Dashrath Khap, P.O. & P.S. Madanpur, District Aurangabad.
2. Rajballam Yadav, Son of Late Chandradeo Yadav, Resident of Village Dashrath Khap, P.O. & P.S. Madanpur, District Aurangabad.

.... Petitioners

Versus

1. Kedar Yadav Son of Deoki Yadav
2. Ram Pukar Yadav, son of Deoki Yadav, Both resident of village Dashrath Khap, P.O. & P.S. Madanpur District Aurangabad.
3. The State of Late Gini Yadav, Son of Late Khadan Yadav, and State of Rukmani Yadav, Wife of Gini Yadav, Resident of Village Dashrath Khap, P.O. & P.S. Madanpur, District Aurangabad.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Akhilesh Kumar Sinha

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 10-08-2018

Heard learned counsel for the petitioners.

The petitioners have filed this Civil Miscellaneous petition against the order dated 03.05.2018 passed in Probate Case No.01/2012/12/2018 by which the petition of the petitioners for impleading them in Probate Case has been dismissed.

Learned counsel for the petitioners submits that the Probate Case No.01/2012/12/2018 is filed to probate the will of Gini Yadav. Gini Yadav executed a will with regard to the entire lands which are subject matter of Title Partition Suit No.17/2008 in which Gini Yadav was also one of the defendants but he died during the pendency of the suit. The petitioners filed appeal against the judgment and decree passed in Title Partition Suit



No.17/2008, therefore, it is submitted that the petitioners are necessary party in the Probate case as the properties bequeathed by Gini Yadav are not partitioned among the co-sharer. Therefore, the order may be set aside and the petitioners be directed to be implead in the probate case but I do not find any substance in the submission of learned counsel for the petitioners. Kedar Yadav and Ram Pukar Yadav filed Probate case to probate the will of Gini Yadav. In Probate case, the genuineness of will is tested. If in the partition suit, Gini Yadav is not entitled to get any share even if he executed will of such property outside his share, the same will not affect the title of the petitioners. Thus, the petitioners do not appear to be necessary or proper party in deciding the genuineness of the probate and the learned Additional District Judge-II, Aurangabad has rightly dismissed the petition of the petitioners for impleading them as defendants in the Probate case.

Accordingly, I do not find any merit in this Civil Miscellaneous petition. The same dismissed.

(Prabhat Kumar Jha, J)

Amit/-

U			
---	--	--	--

