

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.883 of 2018

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Jeerawati Kuer @ Jeera Kunwar, widow of Late Rameshwar Pandey, daughter of Late Makkhan Pandey, resident of village- Bahadura, Post Office- Dadar, Police Station- Mohania, District- Kaimur at Bhabua. At present residing at village and Post Office- Ratwar, Police Station- Bhabua, District- Kaimur at Bhabua.

.... Appellant/s

Versus

1. Mahendra Chaubey, Son of Late Triyogi Chaubey.
2. Madan Chaubey, Son of Late Triyogi Chaubey.
Both residents of village – Sahabajpur, Police Station – Mohania, District – Kaimur at Bhabua.
3. Sitaram Pandey, son of Late makkhan Pandey.
4. Saraswati Devi, wife of Sitaram Pandey.
5. Mukesh Kumar Pandey, son of Sitaram Pandey.
6. Yogesh Kumar Pandey, son of Sitaram Pandey.
7. Mangalam Pandey (Minor), under Guardianship of His father namely Mukesh Kumar Pandey.
8. Durga Pandey, wife of Mukesh Kumar Pandey.
9. Shweta Devi, wife of Yogesh Kumar Pandey.
Respondent No. 3 to 9 all residents of village and Post Office – Ratwar, Police Station – Bhabua, District – Kaimur at Bhabua.
10. Babita Devi, wife of Satish Pandey, daughter of Sitaram Pandey, resident of village, Sikanderpur Post Office Dhamhapur Harahua, P.S. Shivpur, District – Varanasi (U.P.)
11. Soni Devi, wife of Sri Dhananjay Pandey, daughter of Sitaram Pandey, resident of village, P.O and P.S. Mohania, District – Kaimur at Bhabua.
12. Sarvadev Pandey, son of Late Makkhan Pandey.
13. Prabha Devi, wife of Sarvadev Pandey.
14. Satish Kumar Pandey, Son of Sarvadev Pandey.
15. Nandini Devi, wife of Brij Bhushan Pandey, daughter of Sarvadev Pandey.
16. Bhudeshwar Pandey, Son of Late Makkhan Pandey.
17. Kusum Devi, wife of Bhudeshwar Pandey.



18. Amit Kumar Pandey, son of Bhudeshwar Pandey.
19. Anuj Kumar Pandey, son of Bhudeshwar Pandey.
20. Mithilesh Pandey, son of Late Makkhan Pandey.
21. Geeta Devi, wife of Mithilesh Pandey.
22. Gaurav Kumar Pandey, son of Mithilesh Pandey.
23. Priya Kumari, daughter of Mithilesh Pandey.
24. Madhulatha Pandey, daughter of Mithilesh Pandey.

Respondent No. 12 to 24 all residents of village and P.O. Ratwar, Police Station – Bhabua, District – Kaimur at Bhabua.

25. Malati Devi, wife of Purushottam Tiwari, Daughter of Late Makkhan Pandey, resident of village Sisaura, P.O. Taraitha, Police Station Ramgarh, District Kaimur at Bhabua.
26. Chandrawati Kuer, widow of Late Rajdev Pandey, daughter of Late Makkhan Pandey, resident of village Kishunpura, PO Darawan, P.S. Ramgarh, District of Kaimur at Bhabua.
27. Heerawati Devi, wife of Bhagwan Chaubey, daughter of Late Makkhan Pandey, resident of village and post office Mujan, P.S. Mohania, District Kaimur at Bhabua.
28. Rita Kumari, wife of Arun Kumar Singh, resident of village Akhalaspur, P.S. Bhabua, District Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 26-07-2018

Heard learned counsel for the petitioner.

The petitioner has filed this petition against the order dated 16.04.2018 passed in Title Suit No.383 of 2010 by which the petition of the respondents 1 and 2 filed under Order 22 Rule 10 read



with Section 151 of the Code of Civil Procedure have been allowed.

Learned counsel for the petitioner submits that during the pendency of the suit, Defendant No.24 died leaving behind no legal heir and representative. Respondent nos.1 and 2 filed petition claiming interest in the property of Most. Radhika Kuer who bequeathed her property in favour of her nephews. Learned counsel for the petitioner submits that the person in whose favour the property is bequeathed by the author of the will cannot claim to be legal heirs and representatives of the author of the will after his death in a suit unless and until the Will is probated. Learned counsel for the petitioner submits that this point has come up for consideration before the Apex Court in the case of **Narayan Das Lila Ram Adnani vs. Narsing Das Narain Das and others** reported in **1995(1) BLJR 404** and also before a Bench of this Court in M.A. No.442 of 2009, Most. Parwati Kuer vs. Smt. Naulakhi Devi and others and it is decided that legatee of a Will cannot be party in a suit against the executer of the Will.

On consideration of the submissions and on perusal of the order impugned, I find that the learned Sub Judge taking into consideration the provisions of Order 22 Rule 10 CPC has allowed the petition of the respondent nos. 1 and 2 on the ground that since the defendant no.24 died during the pendency of the suit and in view of



the provision Order 22 Rule 10 of the C.P.C., a person can be substituted in place of the deceased, who can protect the right and the property of the deceased. Of course, the Will is not probated but by executing Will, defendant no.24 bequeathed her property in favour of respondent nos. 1 and 2. After death of defendant no.2, the respondent nos.1 and 2 have got right to protect the right of interest of the deceased who died during the pendency of the suit after executing the Will bequeathing properties in favour of respondents. Thus, I do not find any illegality or error on the face of the order impugned.

Accordingly, the Civil Misc. petition is dismissed.

(Prabhat Kumar Jha, J)

N.H./-Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01-08-2018
Transmission Date	

