

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 303 of 2018

Dharampal @ Ramkripal S/o Late Shivpal, Caste Harijan
(Chamar)Aged About 21 Years , R/o Village Katgodi, Police Station
And Tahsil Sonhat, District Koriya Chhattisgarh.

---- Petitioner

Versus

1. The Manager S.E.C.L. Sahdev Churcha West Colliery, Tahsil Baikunthpur, District Koriya Chhattisgarh.
2. The General Manager, S.E.C.L., Baikunthpur Area, District Koriya Chhattisgarh.
3. The Regional Commissioner, Coal Mines Provident Fund, Shakti Nagar, Gupteshwar, Jabalpur (Madhya Pradesh)
4. The Branch Manager, Bhartiya Jivan Bima Nigam, Branch Manendragarh, District Koriya Chhattisgarh.
5. Shanti Bai W/o Shankar, Aged About 50 Years R/o Village Khanda, Police Station And Tahsil Baikunthpur, District Koriya Chhattisgarh.
6. Kunti Bai D/o Bachchu Ram, W/o Shivcharan, Aged About 45 Years R/o Village Kathautiya, Police Station And Tahsil Manendragarh, District Koriya Chhattisgarh.
7. General Public
8. Branch Manager, State Bank Of India, Branch Churcha Colliery, District Koriya Chhattisgarh.
9. Dharmpal @ Sonsai S/o Shivpal, Aged About 39 Years, Harijan, R/o Village Khada, Police Station And Tahsil Baikunthpur, District Koriya Chhattisgarh.
- 10.Dimpal Kumar S/o Rama, Caste Chamar, Aged About 29 Years, R/o Katgodi, Police Station Sonhat, District Koriya Chhattisgarh

---- Respondents

For petitioner –Shri D.N. Prajapati, Advocate.
For respondents No.1 & 2 -Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

10/04/2018

Heard.

1. The order under challenge in this petition is dated 19/03/2018 wherein an application under Order 1 Rule 10 CPC has been allowed by the learned court below which was dealing in proceeding under Section 372 of the Indian Succession Act and on the basis of WILL a person name Dimpal Kumar who

claims to be beneficiary under the WILL has been allowed to be added as party. Proceeding as would show that an application under section 372 of the Indian Succession Act was filed by one Dharampal @ Ramkripal for amount kept in the name of one late Shivpal who was working with SECL. Another Dharampal @ Sonsai also claimed saying that he is son of Shivpal. In such proceeding one Saguniya @ Shanti Bai claimed herself to be wife of late Shivpal and according to the service record wherein name of Shanti Bai was recorded who claimed that she is the same person. During pendency of the proceeding Saguniya died, therefore on the basis of copy of WILL one Dimpal Kumar claimed to be added as a party. Learned court below on the basis of the WILL added said Dimpal Kumar as a party in the proceeding under section 372 of the Indian Succession Act it was recorded that in absence of Saguniya @ Shanti Bai who died her right can only be claimed by the beneficiary of the WILL. Thereby, Dimpal Kumar was added as a party.

2. Learned counsel for the petitioner would submit that order impugned is completely illegal as there is no certainty of the WILL existed, therefore applicant could not be added as a party.

3. Perusal of the order reflects that in proceeding under section 372 of the Indian Succession Act an application was filed by Dimpal Kumar S/o Rama under Order 1 Rule 10 CPC claiming his right under a WILL. Learned court below on the copy of the WILL have added applicant Dimpal Kumar as a party to the proceeding under Section 372 of the Indian Succession Act. Order prima facie reflects that WILL was not proved according to the statute by leading evidence, therefore by simple production of the WILL unless and until it is proved according to the statute same cannot be accepted to be genuine by mere production. By addition of the party on the basis of WILL applicant Dimpal Kumar stepped into shoes of the deceased so as to claim property on the basis of the WILL. When parties are disputing identity of each other, therefore if WILL is accepted at the threshold by mere production without proof of it as required under the law. It will have serious impact to

curtail right of the applicant petitioner herein. Dimpal Kumar will not come as a legal representative but would be as a beneficiary of the WILL. Therefore, order dated 19/03/2018 is set aside. Application under Order 1 Rule 10 CPC may be adjudicated by the court below afresh after recording evidence of authenticity of WILL which so produced during the course of proceeding.

4. With such observation, petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

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