

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20450 of 2011

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NAGESHWAR YADAV S/O Shivjee Yadav Resident Of Mohalla - Bhagwan Das, P.O., P.S. and District - Darbhanga

... .. Petitioner/s

Versus

1. NAVIN KUMAR Son Of Upendra Nath Prasad Resident Of Village - Kansar, P.S. - Belsand, District - Sitamarhi, Presently Resident Of Mohalla - Bhagwan Das, P.O., P.S. and District- Darbhanga
2. Sunil Kumar Son Of Upendra Nath Prasad Resident Of Village - Kansar, P.S. - Belsand, District - Sitamarhi, Presently Resident Of Mohalla - Bhagwan Das, P.O., P.S. and District- Darbhanga
3. Avinash Kumar Son Of Upendra Nath Prasad Resident Of Village - Kansar, P.S. - Belsand, District - Sitamarhi, Presently Resident Of Mohalla - Bhagwan Das, P.O., P.S. and District- Darbhanga
- 4.1. Mithilesh Prasad S/o Late Manindra Prasad R/o Vill- Simara, P.S. L.N.M.U. P.O. and District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sangeeta Sharma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

12 23-08-2019 The short point raised by the learned counsel appearing for the petitioner is that a Probate Case No. 13 of 1998 was filed by the original respondent no. 1, who is the brother of the deceased Deomangala Devi in order to get a declaration qua the will executed by Deomangala Devi in his favour. During the course of the probate proceedings, the petitioner herein, who had purchased the land in question (part of the will), from Gita Devi, daughter of Keola Devi, the first wife of late Yugeswar Prasad, whose second wife is said to be Deomangala Devi, had filed a caveat before the probate court in order to protect his interest, whereafter, the learned trial court by an order dated



17.5.2006 passed in Probate Case No. 13 of 1998 had accepted the caveat of the petitioner herein and directed to convert the probate case into a title suit, as also had permitted the caveator and other defendants to file written statement.

The learned counsel for the petitioner has relied upon Section 295 of the Indian Succession Act, 1925 and has submitted that in case, a contentious issue arises, the probate case can be converted in a regular suit and the petitioner of the probate case shall be depicted as the plaintiff and the person who has appeared to oppose the grant of probate shall be arrayed as defendant.

It is thus submitted that after passing of the order dated 17.5.2006, the Probate Case No. 13 of 1998 pending before the learned court of A.D.J., Fast Track Court No. V, Darbhanga stood converted into Title Suit No. 1 of 2006 and the petitioner herein-caveator in the said probate case was arrayed as a defendant. In such view of the matter, it is submitted that the learned trial court was not correct in dismissing the petition of the petitioner for being added as defendant to the said suit by the impugned order dated 5.8.2011 inasmuch as the said petition had been filed by way of precaution in the year, 2001 itself whereas the probate case stood converted into title suit only on



17.5.2006. Thus, in nutshell, the submission of the learned counsel for the petitioner is that since the probate case stood converted into a title suit and moreover the caveat of the petitioner was also allowed and he was permitted to file a written statement, obviously, the petitioner was arrayed as a defendant in the said title suit, hence, the petition of the petitioner dated 12.2.2001 ought to have been consigned to the records instead of being dismissed.

The learned counsel appearing for the respondents submits that the petitioner is already a defendant in the aforesaid Title Suit No. 1 of 2006.

Having regard to the facts and circumstances of the case and considering the admitted fact that the petitioner is already a defendant in Title Suit No. 1 of 2006, this Court finds that it would be in the interest of justice to hold that the order dated 5.8.2011 shall have no effect since the petitioner had already stood arrayed as a defendant prior to passing of the said order. It is ordered accordingly.

The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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