

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.532 of 2014

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Sneha Lata, Daughter of Late Sankat Mochan Tiwary, W/o Late Satyendra Mohan Tiwary, Resident of Village and Post Kayam Nagar, Police Station Koelwar, District Bhojpur

... .. Appellant

Versus

Anita Devi, W/o Sh. Subhas Pandey, Resident of Village Barka Dumra, Police Station Arrah Muffasil, District Bhojpur, at present Resident of Village and Post Kayam Nagar, Police Station Koelwar, District Bhojpur

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Narendra Kumar Singh, Advocate Mr. Santosh Kumar, Advocate Mr. Manoj Kumar, Advocate
For the Respondent	:	Mr. Aditya Narayan Singh -I, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-02-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under Order XLIII, Rule 1(r) of the Code of Civil Procedure, against the order dated 05.06.2014 passed by the learned 5th F.T.C./Adhoc Additional District Judge-V, Arrah in Title Suit No. 19 of 2012 whereby the parties have been directed to maintain status quo regarding alienation of the property by way of interim measure.

3. Respondent-Anita Devi had brought Probate Case No. 34 of 2011 for grant of probate in respect of registered WILL



executed by Most. Heera Jhari Kuer. The appellant challenged the claim of the respondent before the court below and, as such, the probate case was converted into Title Suit No. 19 of 2012.

4. It is admitted case of the parties that one Sheo Shankar Tiwary had two sons, namely, Sankat Mochan Tiwary and Baij Nath Tiwary. The claim of the respondent is that after death of Sheo Shankar Tiwary and his wife, the joint family property was partitioned in a family arrangement. Baijnath Tiwary came in peaceful physical possession of the land allotted to him and after his death widow Heera Jhari Kuer got the property and she had executed the registered deed of WILL in favour of the respondent.

Nothing was brought on the record that there was family partition or the so-called family arrangement was ever acted upon by mutation of name of the respective allottee or payment of rent to the State and grant of receipt by the State.

5. The appellant herein claims to be descendant of the branch of Sankat Mochan Tiwary in the manner that Sankat Mochan Tiwary had a son Satyendra Mohan Tiwary and appellant



is wife of Satyendra Mohan Tiwary. The appellant contended that respondent is not a family member, rather was a tenant in the house of Heera Jhari Kuer and he has created a forged deed of WILL said to be a registered document which was not, in fact, executed by Heera Jhari Kuer in a sound disposing state of mind.

6. Learned counsel for the appellant submits that the impugned order has been passed without application of judicial mind inasmuch as there is no mention of property which was subject matter of the WILL in the registered deed of WILL. Though description of certain land is there in Schedule 'K' of the probate petition. According to learned counsel for the appellant in absence of evidence to the contrary, the appellant is admitted co-sharer and a co-sharer cannot be restrained from the use of the land. Moreover, the husband of Heera Jhari Kuer died issueless in estate of jointness and after death of Heera Jhari Kuer, the property came to the appellant by survivorship.

7. Without making any comment on the merit of the impugned order whereby both the parties have been directed to



maintain status quo with regard to the suit property, so far its alienation is concerned, this Court directs the court below to dispose of the probate matter within six months. If the plaintiff would not cooperate, the order of status quo shall be vacated by the court below after expiry of period of six months and if the defendant is found non-cooperative, the court below shall pass necessary order according to law. No unnecessary adjournment shall be allowed to either of the parties.

8. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
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