

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1067 of 2018

1. Naresh Tanti and Ors S/o Late Mathura Tanti,
2. Dhaneshwar Tanti, S/o Late Mathura Tanti,
3. Shambhu Tanti, S/o Late Mathura Tanti,
4. Singeshwar Tanti, S/o Late Mathura Tanti, All 1 to 4 are resident of Keval Tola, P.O.- Guguldih, P.S. Gidhaur, Dist.- Jamui.

... .. Petitioner/s

Versus

Geno Tanti S/o Late Jehal Tanti, resident of Village Gangti Vishanpur, P.S.-
Khaira, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kartik Kumar Sinha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 22-11-2022 Heard Mr. Kartik Kumar Sinha, learned counsel for
the petitioners.

The petitioners are aggrieved by the order dated
24.05.2018 passed by learned Munsif, Jamui in Title Suit No.
26/2009 by which the respondent has been impleaded as
plaintiff under Order 1 Rule 10(2) of the C.P.C.

Learned counsel for the petitioners submits that
originally one Bisu Tanti filed Title Suit No. 26 of 2009 for
declaration of title, confirmation of possession over the land
described in Schedule -I of the plaint and for setting aside the
sale deed executed on 02.08.1994 by the plaintiff in favour of
the defendant declaring it as null and void.



The contention of the petitioners is that the respondent filed a petition on the strength of unregistered Will executed by Kavia Devi on 22.11.2016, who was substituted in place of the original plaintiff in the title suit as plaintiff after the death of her husband during pendency of the suit. Learned counsel further submits that the respondent is the brother of the substituted plaintiff / Kavia Devi, who also died during pendency of the suit and since the respondent has filed a petition for his impleadment on the basis of Will without the Will being probated. Unless the Will is probated by the competent court, the respondent has got no right upon the suit property and has no right to contest the suit property. Learned counsel relies upon Section 213 of the Indian Succession Act, 1925 which in my opinion is not applicable in the facts of the case. He next submits that Order 1 Rule 10(3) of the C.P.C. stipulates that “no person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent”.

I have heard learned counsel for the petitioner. In the present case the original plaintiff died during pendency of the title suit. The wife of the original plaintiff was substituted as plaintiff and during her life time she executed Will in favour of



the respondent pertaining to the suit property and subsequently, she also died. Both husband and wife were issueless. The respondent on the basis of the Will executed in his favour regarding the suit property filed a petition for his impleadment as plaintiff in the title suit. The issue which has been raised in the plaint by the original plaintiff can not be decided and judgment cannot be passed in absence of a person, who can pursue the right of the plaintiff after his death. The respondent claiming to be the holder of the Will through the wife of the original plaintiff has filed a petition for his impleadment in order to pursue the suit filed by his testator. In my opinion by virtue of the Will pertaining to the suit property the respondent has got some legal interest in the property and in his absence the suit cannot be decided effectually and completely by the trial court. For adjudication of the issues involved in the suit and in order to settle all the questions involved therein, in my opinion, it is necessary that the sole respondent be added as a plaintiff in the suit which has rightly been done by the trial court. The provision of Order 1 Rule 10(3) of the C.P.C. is not applicable in the facts of the case as Order 1 Rule 10(3) of the C.P.C. says that no person shall be added as a plaintiff without the consent of the plaintiff. Here the original plaintiff as well as his wife has



already died.

In view of the aforesaid facts involved in the case, in my opinion, the impugned order dated 24.05.2018 passed in Title Suit No. 26/2009 does not require any interference by this Court.

The application stands dismissed.

(Anil Kumar Sinha, J)

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