

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.953 of 2018

1. Pankajesh Pran Ranjan Dwivedi @ P. P. Ranjan Dwivedi Son of Sri Deewakar Dwivedi,
2. Achey Lal Sah, Son of Late Ram Darshan Sah, Both are resident of Village and P.O.- Paterha, P.S.- Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

1. Hari Shankar Pandey, Son of Late Sidheshwari Sharan Pandey, Resident of Village- Patedha, P.S.- Maharajganj, District- Siwan.
2. Ramashankar Pandey,
3. Gopinath Pandey,
4. Hare Ram Pandey, All are sons of Late Sidheshwari Sharan, Resident of Village- Patedha, P.S.- Maharajganj, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pranav Kumar Jha
For the Respondent/s	:	Mr. Dewendra Narayan Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

16 28-08-2023 Heard learned counsel for the parties.

2. This application has been filed for setting aside the order dated 26.04.2018 passed in Probate Case No. 48/2014 by the learned Additional District & Sessions Judge- IIIrd, Siwan by which the application of the petitioners filed for impleading them as opposite parties in the said case has been rejected and further to add the name of the petitioners as opposite parties in the said Probate Case, so that they may contest the case for defending their interest.

3. The Probate Case No. 48 of 2014 was filed for the



probate of the will dated 10.05.1980.

4. Learned counsel for the petitioners submit that the petitioners are the purchaser from one of the brother of Hari Shankar Pandey. He has purchased the property in the year 20.03.2014 and therefore he has filed an application under order 1 rule 10 for addition of party which has been dismissed by the order dated 26.04.2018 by the court below.

5. Learned counsel for the petitioners has relied upon a judgment of Hon'ble Supreme Court in the case of **G. Gopal vs. C. Baskar & Ors. 2008 Volume 10 SCC 489**. In the case of **G. Gopal vs. C. Baskar & Ors. (supra)** the Supreme Court has held as para 5 quoted hereinbelow:

5. For the reasons aforesaid, we do not find any ground to interfere with the impugned order of the High Court. Mr. Thiayagarajan, learned counsel appearing for the appellant submits, on instruction, that the present respondents shall be made parties in the proceeding for grant of probate within a fortnight from this date. If such an application of impleadment is filed, it is needless to say that the same shall stand allowed and, in that case, the probate proceedings as well as the suit being Suit No.772 of 2005 filed in the original side of the Madras High Court shall be clubbed together and dispose of at an early date



preferably within four months from the date of communication of this order.

6. Learned counsel for the petitioners has also relied upon in the case of ***Indian Associates vs. Shivendra Bahadur Singh and Ors. AIR 2003 292*** and has submitted that the prayer of the petitioners ought to have been accepted by the district court. The paragraphs no. 29 and 30 reads as follows:

29. Having given our anxious consideration to all relevant aspects of the matter, we feel that as soon as it is established that a person or legal entity, has an interest in the estate, it would be permissible to the said party to apply to the concerned Court, for being permitted to intervene or being impleaded as a party even in the testamentary proceedings since the judgment of the Court in probate proceedings is a judgment in rem, and not a judgment in personam.

30. Except for the person having such an interest, in many cases there is no one else who can effectively represent or safeguard his interest, and it could well be that by inadvertence, or design, or collusion the case may be pleaded or pursued by the remaining or surviving legal heirs, in a manner so as to unjustly deprive the third party of their lawful rights.



7. It is well settled that if a person who has even a slight interest in the interest of the testator is entitled to file caveat and contest the grant of probate of the will of the testator.

8. Learned counsel for the opposite party no. 2 submits that the present probate case is not a title suit and therefore the petitioner has rightly not been added to be a party to the case.

9. In view of above, this application is allowed.

10. The petition dated 04.01.2016 filed by the intervener is allowed.

(Sandeep Kumar, J)

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