

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.578 of 2017**

**In
CIVIL REVISION No.38 of 2017**

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Smt. Dhaneshwari Devi wife of Umesh Sharma, resident of Mauza Hardiya,
Police Station Mehdiya and District Arwal.

... .. Petitioner

Versus

1. Amit Kumar son of Brij Kishore Sharma.
2. Ashok Kumar son of Brij Kishore Sharma.
3. Sanket Kumar son of Brij Kishore Sharma.
4. Manish Kumar son of Brij Kishore Sharma.

All resident of Akronja, Police Station Bansi and District Arwal.

5. Pinki Kumari daughter of Kundu Singh, resident of Village Mariyama,
Police Station Bikram and District Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Avinash Chandra, Advocate
For the Respondent/s	:	Mr. Rajiv Ranjan Kumar Pandey, Advocate Mr. Kritya Nand Jha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 01-08-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 27.01.2017 passed in Title Suit No. 13 of 2012, whereby the learned Sub-Judge 1st, Arwal, allowed the petition dated 09.12.2016 filed on behalf of the respondent nos. 1 to 4 under Order 1 Rule 10 (2) and Order 22 Rule 10 of Code of Civil Procedure and Section 211 and 212 of the Indian



Succession Act.

3. The brief facts of the case are that one Gyanti Devi has filed suit for declaration of the title of the plaintiff and also for setting aside the executed sale deed by respondent no. 1 in favour of respondent no. 2 with regard to the suit property. Defendants contested the suit, issues were framed and plaintiff has given her evidence on 12.03.2014. The plaintiff hereafter died on 29.09.2016. Thereafter, respondent nos. 1 to 4 filed a petition dated 09.12.2016 claiming that original plaintiff Gyanti Devi had already executed a deed of Will on 02.07.2016, which was registered on 04.07.2016, voluntarily and in good state of mind. After death of testator Gyanti Devi these intervenors are her legal representatives for all purposes including the suit properties. It is also stated that intervenors are ready to contest the suit. Accordingly, they may be impleaded in the suit in the category of plaintiffs as being necessary parties. Despite given sufficient opportunities, petitioner failed to file any rejoinder to contest the said application. Accordingly, learned trial court vide impugned order dated 27.01.2016 allowed the said petition and ordered to implead respondent nos. 1 to 4 in the category of plaintiffs and the case has been fixed for the evidence.

4. Learned counsel for the petitioner submits that



petitioner till date has not filed either original or copy of the alleged Will and without giving any finding on the said, the learned court below has allowed the petition. He further submits that till date respondent nos. 1 to 4 have not filed any probate case. He also submit that Gyanti Devi was issueless. Accordingly, as per the Indian Succession Act, the heirs had to be impleaded in her place to contest the suit not the respondent nos. 1 to 4. He further submits that case is at advance stage, at this stage making respondent nos. 1 to 4 as party is not proper.

5. On the other hand, learned counsel for the respondents submits that respondent nos. 1 to 4 are nephew of original plaintiff who executed the registered will in their favour with respect to the suit property. Accordingly, they are necessary party and they are ready to contest the suit. Accordingly, the learned court below has rightly allowed their petition. He has filed the copy of the Will in the case and he will file the same before the trial court also. He further submits that under Order 1 Rule 10 (2) of C.P.C., the court can implead them at any stage of the suit since respondent nos. 1 to 4 are necessary party. Therefore, there is no illegality in the impugned order and no interference of the court is required in its supervisory jurisdiction.



6. The law is well settled by the *catena* of judgments that if any party is necessary party or proper party for effective adjudication of the suit then the court at any stage can implead such parties. An effective order cannot be passed without the presence of necessary party as the relief would affect the right of such person. A proper party is a person whose absence an effective order can be passed, but his presence as a party would assist the court to adjudicate effectively and completely. The rule also contributes to the expeditious disposal of cases by preventing multiplicity of litigation and consolidating all relevant issues and claims in a single suit. Order 1 Rule 10 (2) of the CPC gives wide discretion to the Court to deal where the impleadment of the said party is necessary and vital for the decision of the suit.

7. The definition of legal representatives under Section 2 (11) of C.P.C. is very wide and will certainly include a person who seeks to represent the estate of a deceased person on the basis of Will said to have been executed by the deceased in his favour. The substitution would certainly not confer any special right nor would make such representatives as heir to the property of the deceased.

8. Section 211 of Indian Succession Act, shows that



the property vests in the executor by virtue of Will and not by virtue of the probate. Will gives property to the executor; grant of probate is only a method by which the law provides for establishing the Will. Section 211 declares that the executor or administrator of a deceased is his legal representative for all purposes.

9. Order XXII Rule 10 contemplates a situation arising in the cases of assignment, creation and devolution of interest during pendency of a suit, other than those referred to in earlier Rules. It is based on the principle that trial of a suit cannot be brought to an end merely on account of interest of a party, subject matter of suit, is devolved upon another, during its pendency. Such a suit may be continued with the leave of the Court, by or against the person upon whom such interest has devolved.

10. The conjoint reading of Section 2 (11) and Order XXII Rule 3 and Rule 10 of C.P.C. will leave no room for any doubt that a person who can represent the estate of a deceased and includes such person who intermeddles with the estate of the deceased can be substituted in case of death of such person, in his place and; that such legal representatives may not be the legal heir of the deceased person.



11. In the present case, the respondent nos. 1 to 4 have claimed that the original plaintiff has executed registered Will in their favour with respect to the suit property. Accordingly, they are legal representative of the plaintiff who are necessary parties and, the trial court has rightly impleaded them as the plaintiffs in the suit. The trial court has not assigned the detailed reasons for allowing the petition. Since the impugned order is valid order, this Court is not inclined to interfere in the same in its supervisory jurisdiction under Article 227 of the Constitution of India.

12. In view of the above, this Court finds no infirmity or illegality in the impugned order and this Civil Miscellaneous application is liable to be dismissed.

13. This Civil Miscellaneous Application is, accordingly, dismissed. It is needless to say that the petitioner has right to contest any separate claim, if any, made by the respondent nos. 1 to 4 in the suit.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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