

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1076 of 2023**

**In
Civil Writ Jurisdiction Case No.10776 of 2015**

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Ram Uday Kumar Adopted son of late Moti Rai @ Moti Lal Yadav and
Sudama Devi Resident of Bari Pahari, P.S.- Agamkuan, District- Patna.

... .. Petitioner/s

Versus

1. Bijit Kumar Son of Late Siya Sharan Yadav R/o Village- Bari Pahari, P.S.- Agamkuan, District- Patna.
2. Ajit Yadav Son of Late Siya Sharan Yadav, R/o Village- Bari Pahari, P.S.- Agamkuan, District- Patna.
3. Sujit Kumar S/o Late Siya Sharan Yadav R/o Village- Bari Pahari, P.S.- Agamkuan, District- Patna.
4. Pramila Devi Wife of Ajit Yadav R/o Village- Bari Pahari, P.S.- Agamkuan, District- Patna.
5. Pranita Kumari Wife of Sujit Kumar R/o Village- Bari Pahari, P.S.- Agamkuan, District- Patna.
6. Smt. Shobha Sinha, D/o Sri Upendra Prasad, resident of Village - Nisarpura, Post Office - Phulwari, Police Station - Phulwari, District - Patna.
7. Smt. Veena Kumari, Wife of Chandrajeet Singh resident of Village - Singhara, P.S. - Maner, Post Office - Kamla Gopalpur, District - Patna.
8. Sandeep Kumar, Son of Prahlad Sharma, resident of Village - Senari, Police Station - Karpi, Post Office - Khatangi, District - Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Abinash Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 11-04-2025

Heard learned senior counsel for the petitioner as well
as learned counsel for the respondents.

2. Petitioner is aggrieved by the order dated
22.05.2015 passed by the learned Sub Judge II, Patna City in
Title Suit No. 182 of 2008 whereby and whereunder an



application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure (in short “the Code”), for being impleaded as plaintiff on the ground of being adopted son of the original plaintiff as well as legatee of the registered Will dated 30.07.2010 in favour of the petitioner left by the original plaintiff, has been rejected.

3. Learned senior counsel appearing on behalf of the petitioner submits that the learned trial court rejected the prayer for substitution/impleadment only on the ground that the Will was not probated but this is against the settled provision of law. Learned senior counsel further submits that subsequently further development has taken place and now the Will in favour of the petitioner has been probated vide Probate Case No. 04 of 2017 by the Additional District Judge-IV, Patna City. Hence, nothing remains in the matter and the impugned order needs to be set aside for being passed against the settled provisions of law.

4. Learned counsel appearing on behalf of the respondents opposes the submission made on behalf of the learned counsel for the petitioner. Learned counsel submits that even if the Will has been probated, the petitioner has been granted liberty by the learned trial court that the petitioner could institute a suit after obtaining a Letter of Administration in



respect of the Will dated 30.07.2010.

5. The short issue involved in the present case is that whether the learned trial court was justified in rejecting the prayer for impleadment sought by the petitioner on the ground of being legatee of the Will in his favour by the testator who was the sole plaintiff before the learned trial court. Recently, this Court in two matters, ***Rajniti Yadav vs. Ramabaran Yadav & Ors.*** in ***Civil Miscellaneous Jurisdiction No. 104 of 2016*** and ***Ashutosh Kumar Singh & Anr. Vs. Laxmi Prasad Singh & Ors.*** in ***Civil Miscellaneous Jurisdiction No.979 of 2017***, relying on the decisions of Hon'ble Division Benches of this Court in the case of ***Suresh Singh and Anr. Vs. Dr. Raja Ram Singh and Ors.*** reported in ***1992(2) PLJR 129*** and ***Bhudeb Chandra Roy Vs. Bhikshakar Pattanaik and Ors.*** reported in ***AIR 1942 Patna, 120***, has earlier dealt with the issue and came to a finding that substitution could be allowed even if the claim of the intervenor is based on a unprobated Will. The proposition which emerged from the two decisions of this Court is that the estate of the deceased testator vests in the executor immediately upon the death of the testator conferring certain rights to him. In ***Suresh Singh (Supra)*** while referring to the case of ***Ramcharan Singh Vs. Mst. Dharohar Kuer*** reported in ***AIR***



1984 Patna, 175 it has been observed that a legatee derives his title and authority from the Will of its testator and not from the grant of probate. A legatee is creature of the Will and like the executor, legatee comes into existence as soon as the Will becomes an operative document, that is to say, when the testator dies. On these lines the Hon'ble Division Bench held that a legatee or executor of an unprobated Will making a claim on the basis of the same can institute a suit or take a defence in a suit on the basis of such a Will, but his claim cannot be established in a Court of law unless and until a probate or letter of administration is granted meaning thereby that neither any decree can be passed in favour of a plaintiff nor defence can be accepted in such a suit unless probate or letters of administration is obtained before its disposal. It has also been held that if such a legatee or executor can institute a suit or set up a claim by way of defence, he can be allowed to be substituted in place of the testator or added as a party if he makes a claim on the basis of an unprobated Will. The Hon'ble Supreme Court, in the case of **Suresh Kumar Bansal** (Supra), took a similar view wherein it held that a legatee under a Will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative and



it has further been held that in an eviction proceeding, when a legatee under a Will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of Code of Civil Procedure.

6. Therefore in the light of clear position of law, the impugned order could not be sustained hence the order dated 22.05.2015 is set aside and the Title Suit No. 182 of 2008 is restored to its original file.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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