

In the court of 3rd Addl. District Judge, Samastipur

Present- Pranav Kumar Jha, ADJ-III

Mis-32/2017

In the matter of

1. Sukhdeo Giri

Applicant

V/s

1. State of Bihar & Others

Respondents

Dated 15.06.2019

Ld Counsel for applicant.

Ld. Counsel for respondents.

ORDER

1. Present miscellaneous application has been filed on behalf of the applicant seeking substitution in place of applicant Sukhdeo Giri, who died on 12.01.2019.
2. Ld. Counsel further applicant submitted that the Sukhdeo Giri died on 12.01.2019, living behind applicants as legal heir and therefore they are required to be substituted in place of deceased applicant Sukhdeo Giri. Sukhdeo Giri died on 12.01.2019 and present application filed on 12.03.2019 therefore application is will within limitation. Ld. Counsel further submitted that there is a will in favour of the deceased applicant and probate case No. 9/10 is pending seeking probate of said will before Ld. District and Sessions Judge.
3. On the other hand, Ld. Counsel for opposite parties submitted that

the present application is not maintainable. Deceased Sukhdeo Giri was not the Sawayat of the Math. Ld. Counsel for opposite party No.1 further submitted that Neelkanth Mahadev Math is a public trust and it is registered under Hindu Religions Trust. Ld. Counsel also argued that deceased Sukhdeo Giri was wrongly claiming the property of trust as a personal property.

4. Ld. Counsel for opposite party No.2 submitted that the trust in question is public trust and deceased Sukhdeo Giri had already been removed from trust-ship of the Neelkanth Mahadev Math by Bihar Hindu Religion Board in 1997.

Heard Perused

5. All the contentions raised by opposite parties are on the merit of the case present application is only for substitution of legal heir in place of deceased applicant. None of the opposite parties has denied the fact that applicants are the legal heir of deceased Sukhdeo Giri. Claim of deceased is based on a will in the miscellaneous application therefore right to sue survive. Application is within limitation therefore application is allowed. Office clerk is directed to make necessary correction in memo of parties.

(Dictated)

A.D.J-III