

In the Court of District Judge, Supaul

Probate - 4/15

25.04.2019: Heard the Learned Counsel of intervener petitioners for petition dated 07.12.2017 and Learned Counsel of applicant on rejoinder dated 13.09.2017.

Petitinoers Kushmi Devi, Basudeo Goet, Krishnadeo Goet, Indradeo Goet filed petition to implead them as party in probate case under Rule 10(2) of Order 1 CPC.

Petitinoers have averred that Ramji Goet executed will in favour of Gajendra Kumar Goet. Petitioner Kushmi Devi is niece and other petitioners are grandsons of father's brother of Ramji Goet and land mentioned in Will are joint family property and partition suit 232/13 is pending, so, Petitioners may be impleaded as intervenor defendants to contest the suit. Petitioners have objected petition of intervening applicant that they have no interest in property of testator, so they cannot be made party of the case.

It appears that Ramji Goet allegedly executed Will in favour of his grandson Gajendra Kumar Goet and as per GT given by intervener petitioner, Ramji Goet left behind him his two sons Bindeshwar Goet and Kusheshwar Goet, so intervener petitioners are not heird of testator Ramji Goet, so they cannot be impleaded as party in probate case. It is held in rule reported AIR 2008 SC (Supp) page 1663, Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others; (A) Succession Act (39 of 1925), s. 275, S. 283, S. 286 - Probate Court - Jurisdiction - Limited to decide genuineness of Will - Question of title or question of construction of Will relating to right, title and interest of any other person is beyond the domain of Probate Court. Only person can be made party of probate proceedings, who would have inherited property of testator, if Will was not executed. Partition suit and probate proceedings are distinct. In Probate case, only the genuinity of Will is decided. Decision of probate case doesn't operate as *res judicata* in title case. Intervener petitioners will not get share in property of testator, if Will is not executed. Intervener petitioners are not necessary parties of probate case, so they cannot be impleaded.

In the result, petition stands rejected.

Dictated

Surendra Prasad Pandey
(Distt. Judge, Supaul)