

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 248 of 2020

Raj Kumar Sao & Ors. Appellants
Versus
Savitri Kunwar & Ors. Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : Mr. Sanjay Kr. Tiwari, Advocate

Order No.04 Dated- 24.01.2023

I.A. No.422 of 2021

Heard the parties.

Learned counsel for the appellants submits that this interlocutory application has been filed with a prayer to grant leave to the appellants to prefer this appeal against the impugned judgment and award.

It is next submitted that stamp reporter has raised an objection that the appellants of this appeal were not parties in the learned court below. It is then submitted that the appellants have preferred this appeal against the judgment dated 21.04.2017 passed in Probate Case No.03 of 2013 by the Principal District Judge, Garhwa behind the back of the petitioners as they were not made parties in the said probate case; ignoring the mandatory provisions under Section 283 of the Indian Succession Act and also in view of settled principle of law that the persons having caveatable interest be made parties to a probate proceeding. It is further submitted that the land of Khata No.55 and 56 of area 15.05 acres of village Dandai was recorded in the name of Akhaj Sao and the land of khata no.24 in total area of 11.52 acres of village Baila Jhakhra was recorded in the name of Doma Sao who was the father of Akhaj Sao. It is then submitted that Akhaj Sao has four sons namely Arjun Sao and three others and Arjun Sao died issueless in the state of jointness in the year 1935 and thereafter, his widow Kaushalya Devi remarried her *devar* Ayodhya Sao. Thus, the entire interest of Arjun Sao in the undivided joint property devolved upon

his surviving brothers Chhaban Sao, Mahabir Sao and Ayodhya Sao relating to the land in respect of which the Will was executed by the testator and the appellant are descendants of Chhaban Sao, Mahabir Sao and Ayodhya Sao. Hence, it is submitted that the appellants be granted leave to prosecute the appeal.

Considering the aforesaid facts, the prayer is allowed.

The appellants are permitted to prosecute this appeal subject to the condition that they will be bound by the judgment which will be passed in this appeal.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

M.A. No. 248 of 2020

Heard the parties.

Issue notice to the respondents in the matter of limitation.

The appellants are directed to file requisites for service of notice on the respondents in the matter of limitation by registered post with A/D as well as under ordinary process within four weeks failing which; this appeal shall stand dismissed without further reference to the Bench.

Rule is made returnable within six weeks.

List this appeal after receipt of the service report of the notice issued to the respondents.