

(1934) 01 PAT CK 0030

In the Patna High Court

Kunja Behari Das and Others

APPELLANT

Vs

Chintamoni Das and Others

RESPONDENT

Date of Decision : 03-01-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 88

Hindu Law of Inheritance (Amendment) Act, 1929 — Section 2

Citation : AIR 1934 Patna 425

Hon'ble Judges : Fazl Ali, J

Bench : Division Bench

Judgement

Fazl Ali, J.—Its appears that one Ganga Narain Das died on 15th March 1931, leaving certain Immovable properties and certain deposits in the Co-operative Bank of Balasore. On 27th September 1932 the opposite party No. 1 brought a suit claiming a sum of Rs. 6,000 odd deposited in the bank on the ground that he was a member of the joint family. In this suit he impleaded certain step-sisters of the deceased Ganga Narain Das. On 14th November 1932, the petitioners made an application to the Court to be joined as party under Order 1, Rule 10. That application however was dismissed by the learned Subordinate Judge and hence this application in revision.

2. Now, ordinarily, this Court would be most reluctant to interfere with an order refusing to make certain persons parties to the suit; in this particular case there were certain matters which the learned Subordinate Judge has omitted to take into consideration and it is said that the order of the learned Subordinate Judge really amounts to a refusal to exercise a jurisdiction vested in him. The learned Subordinate Judge says that it is unnecessary for him to decide as to who would be the legal heir and that he does not think it proper to order addition of the petitioners as parties as the application filed by the petitioners is strongly opposed to by the plaintiff. These matters however appear to me to be not so material as the question which ought to have been considered by him, namely, whether the addition of the petitioners as parties was necessary in order to enable the Court to effectually and completely adjudicate and settle all the

questions involved in the suit.

3. Reliance has been placed before me by the learned advocate for the petitioners on Section 2, Hindu Law of Inheritance (Amendment Act 2 of 1929), according to which a sister and sister's son shall be entitled to succeed a person as heir in a certain order specified by the Act. In *Ram Adhar and Another Vs. Mt. Sudesra*, a Full Bench of the Allahabad High Court has held that the word "sister" in Section 2, Hindu Law of Inheritance (Amendment) Act 2 of 1929 does not include a half sister either uterine or consanguine.

In this particular case the opposite party No. 1 has impleaded two step-sisters, but not the present petitioners who claim to be sons of a full sister of Ganga Narain.

4. I am not in a position to say whether the fact whether the present petitioners are really the sons of the sister or not will be challenged, but the fact remains that the manner in which the matter was approached by the learned Subordinate Judge was entirely misconceived and he could have properly dealt with the case only by considering whether the addition of the petitioners as parties was necessary to effectually and completely adjudicate upon the question at issue. Order 1, Rule 10, nowhere says that the Court in deciding whether a certain person should be made party or not is to be guided by the wishes of those who are parties to the suit but throws the entire responsibility of deciding the matter upon the Court.

5. It is also to be taken into consideration that Section 88, Civil P.C., which relates to interpleader suits provides that where any suit is pending in which the rights of all parties can properly be decided, no suit of interpleader shall be instituted. In a case therefore where there are more than one claimants the Court may well consider whether all the parties concerned are before him and whether it is necessary to implead any persons who have not been made parties.

6. In these circumstances I would allow this application, set aside the order of the Court below and send the case back to his Court for disposing of the application of the petitioners according to law. It is to be distinctly understood that any observation made by me is not to be taken to mean that the petitioners must be added as parties to the suit even though they fail to prove that they are the sons of the deceased sister as alleged by them. The matter is entirely discretionary with the Court below, but that discretion must be exercised judicially and with proper consideration. In the circumstances of the case there will be no order for costs.