

(2022) 11 JH CK 0027

In the Jharkhand High Court

Case No : Civil Miscellaneous Petition No. 370 Of 2022

Prakash Sonkar @ Prakash Chandra Sonkar And Others

APPELLANT

Vs

Raj Kumar Sonkar And Others

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 26, Order 1 Rule 10(2), Order 6 Rule 17

Indian Succession Act, 1925 — Section 276, 283(C), 295

Citation : (2022) 11 JH CK 0027

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Rajiv Sinha, Shreesha Sinha, Niraj Kumar, Shashank Shekhar, Rohit Sinha, Imran Hasan

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

Instant petition has been filed under Article 227 of Constitution of India for setting aside the order dated 08.06.2022 whereby and whereunder learned District Judge-I, Jamtara has allowed the petition dated 17.05.2022 filed by the Plaintiff in Original Suit (Probate Case) No.01 of 2018 filed under Section 295 of the Indian Succession Act read with Order 1 Rule 10(2) and Order 6 Rule 17 of the C.P.C. for adding defendants in the case.

The probate case has been filed by the respondent no.1-Raj Kumar Sonkar under Section 276 of the Indian Succession Act for grant of probate of WILL dated 15.03.2022.

In this probate case, after issuance of citation under Section 283(C) of the Act, the present petitioners appeared and contested the application for probate. Consequently, the probate case was renumbered as Original Suit (Probate Case) No.01/2018 and issues were framed by the learned District Judge-I, Jamtara on

26.02.2019.

The present petitioners filed a petition dated 06.04.2019 with a prayer to incorporate their names as O.P. second party in the cause title of the probate case and they were impleaded by the order of the Court dated 13.05.2019. During the proceeding, four witnesses have been examined and documents have been exhibited and the matter was pending for argument.

Heard both the sides.

Under Section 295 of the Act, in any case before the District Judge, in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according the provisions of the Code of Civil Procedure, 1908. From a plain reading of Section 295, it is abundantly clear that in case of objection or contention by the opposite parties the probate case shall proceed like a regular suit as far as possible but it does not mean a suit filed under Section 26 of the C.P.C. In this case, on contest, the miscellaneous application for probate has already been converted and is proceeding like a suit after framing of issue and recording of evidence.

In view of the fact that the parties who have been impleaded by the impugned order are admittedly the Class I heir of the testator, there is no error or infirmity in their impleadment. The proceeding shall continue from the stage already reached.

Since the probate case has already proceeded as a testamentary suit, the order of conversion is only in form and not in the content, will be confined to renumbering of the case and therefore need no interference.

Considering the stage of the probate application, the learned Court below is directed to dispose of the probate application within three months of the order.

The Civil Miscellaneous Petition stands dismissed.