SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Surendra Chandra Jena and ors. Vs. Laxminarayan Jena and ors.

Surendra Chandra Jena and ors. Vs. Laxminarayan Jena and ors.

SooperKanoon Citation : sooperkanoon.com/526136

Court : Orissa

Decided On : Nov-17-1987

Reported in : AIR1988Ori143; 65(1988)CLT212

Judge : H.L. Agrawal, C.J.

Acts : Succession Act, 1925 - Sections 211; Code of Civil Procedure (CPC) , 1908 - Order 22, Rule 10

Appeal No. : Civil Revn. No. 507 of 1984

Appellant : Surendra Chandra Jena and ors.

Respondent : Laxminarayan Jena and ors.

Advocate for Def. : S. Misra, Adv. (2)

Advocate for Pet/Ap. : P. Kar, Adv.

Disposition : Application allowed

Judgement :

H.L. Agrawal, C.J.

1. This application by defendants 12 to 14 is directed against the order of the Subordinate Judge, Balasore, refusing their application for transposing them as plaintiffs in place of the original plaintiff on her death in a suit for partition.

2. The application was made by the petitioners on the ground that the plaintiff had executed a will in their favour bequeathing her share in the suit property to them. The application was rejected by the learned Subordinate Judge on the sole ground that the will had not been probated by the court under Section 211 of the Succession Act (for short 'the Act').

3. I am informed that in the meantime the will has been probated in favour of the petitioners for which Mr. Kar appearing for them wanted time to produce the order. Since the statement is coming from the Bar, I would prefer to accept the same.

4. Apart from the above fact, Section 211 of the Act makes a special provision. According to this provision, the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. According to the scheme of the above provision of the Act, the executor is not required to wait for the grant of the probate but can ipso facto being the legal representative prosecute the lis in view of the devolution of the interest under Order 22, Rule 10 of the Civil P.C. inasmuch as the testator's title stands vested in the executor on the his death. The case of an administrator may, however, be different, because he has to wait until grant of the letters of administration in his favour by the court. The proposition is well settled, and if any authority is needed I may refer to a case of the Patna High Court in Ramcharan Singh v. Mst. Dharohar Kuer, AIR 1954 Pat 175.

5. The learned Subordinate Judge, therefore, has committed an apparent error of jurisdiction in rejecting the application of the petitioners. The revision application therefore, must succeed and is accordingly allowed. The trial court is directed to transpose the petitioners to the category of plaintiff.

I shall, however, leave the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com