

14. 21.01.2015 This writ application has been filed challenging the order dated 21.01.2008 rejecting the petition filed by the petitioner under order 1 rule 10(2) of the Code of Civil Procedure and refusing to implead him as a party in T.S. No. 167 of 1998.

2. The suit is for partition filed by Kumudini Behera widow of predeceased son of Banchhanidhi against Banchhanidhi and others. On the death of Banchhanidhi his two daughters were substituted as defendants. The suit was filed in the year 1998 and after closure of the evidence was posted for argument but it was lingering in view of filing of one petition or other calling for their disposal.

3. At this stage, the petitioner sought to be impleaded as a party on the strength of an unregistered and unprobated will said to have been executed by deceased Banchhanidhi. It is also stated that the probate proceeding is pending in Testamentary Misc. Case No.16 of 2007.

4. Heard the learned counsel for the parties and perused the order.

5. It reveals from the order that the court below refused to implead the petitioner at such highly belated stage on the strength of that will said to have been executed by Banchhanidhi when in the suit the share of Banchhanidhi, if any, would be determined and the question of the petitioners claiming said property on the basis of that will would only arise thereafter and in case of probate being granted.

6. From the facts and circumstances of the case, it is found that the presence of the petitioner at this stage in the suit is not necessary for an effectual and complete adjudication of the questions involved in the suit and for a just decision. Furthermore, the petitioners claim on his own showing has not ripened for being considered to clothe him with title in respect of the property bequeathed if any under the will. In this suit his right if any is not at all going to be affected in any way. The petitioners impleadment as a party in the suit at the stage and on the basis as claimed would rather embarrass the trial besides pushing its conclusion to uncertainty.

7. In view of aforesaid discussion, no such error apparent on the face of record is seen with order so as to be interfered in exercise of power under Article 227 of the Constitution of India.

The writ application is accordingly dismissed. No cost.

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D. Dash, J.

