

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.30 of 2014

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1. Radhika Devi Wife Of Girza Rai Resident Of Mauza- Shobhepur, P.O.- Shobhepur, P.S.- Bheldi, District- Saran

.... Petitioner/s

Versus

1. 1. Raghuwar Ray, son of Wakil Ray, resident of Mauza Kansdiyar Baluwa, P.O. Kansdiyar, P.S. Doriganj, District Saran Applicant-O.P. 1st set
2. Indrabhushan Ray
3. Basudeo Ray, both sons of Sukan Rai, Resident of Mauza Kansdiyar Baluwa, P.O. Kansdiyar, P.S. Doriganj, District Saran
4. Chandeshwar Rai
5. Mithleshwar Rai
6. Kamla Ray, all sons of Chethru Rai
7. Simla Devi
8. Nanhki Devi
9. Bhungwa Devi, all daughters of Chethru Rai
10. Chethru Rai, son of Anirudh Rai
11. Viunod Rai, son of Late Surendra Rai
12. Saraswati Devi, wife of Surendra Rai,
13. All residents of Village Rampur Bingawa, P.O. Bingawa, P.S. Doriganj, District Saran.

.... Opposite parties

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 21-08-2015 Heard Mr. Krishna Kant Singh, learned Counsel appearing for the petitioner.

With the consent of the learned Counsel for the petitioner this revision application has been heard on merit and is being disposed by this order.

Aggrieved by the order dated 16.1.2014, by which the court below has rejected the petition for review of the order dated 5.1.2013, this revision application has been filed by the petitioner.

The facts are not in dispute that earlier the Title Suit filed



by the plaintiff-Opposite party was dismissed for default. The revision petitioner was the defendant in the suit. The plaintiff of that suit filed Misc. Case No. 27 of 2010 for restoration of that suit. It is also not in dispute that one of the defendant-Opposite parties in the said Misc. Case died during pendency of the Misc. Case and to be precise, as submitted by the learned Counsel for the petitioner, that the said defendant No. 3 died in the month of January 2011. The revision petitioner filed petitions dated 13.12.2011 and 27.4.2012 pointing out to the Court that there had been no substitution of the said deceased defendant-opposite party in the Misc. Case and therefore the Misc. Case had abated. However, on 13.7.2012 the petition for substitution was filed by the plaintiff-petitioner in the said Misc. Case praying to bring the heirs and legal representatives of the said defendant no. 3 on record.

By order dated 5.1.2013 the court below has allowed the prayer for substitution. Subsequently, a petition was filed on 19.1.2013 by the revision petitioner praying for review of the said order on the ground that the pending two petitions i.e. dated 13.12.2011 and 27.4.2012 were not considered while passing the order dated 5.1.2013.

Learned Counsel for the petitioner has specifically submitted that in view of the provisions of Article 120 of the Limitation Act, the limitation for substitution is 90 days from the date of death of the party (in the present case defendant No. 3) and as the prayer for substitution has been made belatedly the said prayer could not have been allowed as there was no prayer for condonation of delay, and in fact the learned court below has also not considered the objection in



this regard as raised by the revision petitioner. It has been propounded by the learned Counsel that the provisions of Order 22 Rule 4 CPC read with Article 120 of the Limitation Act clearly attracts abatement of the proceeding of the Misc. Case for restoration and in that view of the matter the learned court below ought to have allowed the prayer for review/recall of the order dated 5.1.2013 and ought to have passed order after considering the objections as raised by this revision petitioner in his petitions dated 13.12.2011 and 27.4.2012.

After considering the submissions and perusing the impugned order, it is manifest that entire objection as raised by the revision petitioner was with regard to the abatement of the miscellaneous proceeding in view of the non substitution of the defendant no. 3 in the said proceeding within the prescribed period of limitation as provided under Article 120 of the Limitation Act and the submission has also been made that in view of the provisions of Order 22 Rule 4 CPC the plaintiff-petitioner of the said Misc. Case cannot escape the consequence. A Bench of this Court in the case of Harak Nath Singh vs. Lodha Singh 1978 PLJR 659 has already laid down that the provisions of Article 120 of the Limitation Act is attracted only in the cases of suit or appeal and is not attracted in the case of a petition/application. No decision taking a contrary view has been brought to the notice of this Court. In view of the above dictum laid down by this Court, it is difficult to accept the submission that the consideration of the objection, as raised by the revision petitioner in his two petitions dated 13.12.2011 and 27.4.2012, would make any difference as there is no question of

application of Article 120 and abatement of the Misc. Case for non substitution of the deceased opposite party in the miscellaneous case. It is also well settled that the provisions of Order 22 Rule 4 CPC with regard to abatement is a penal provision which must be construed strictly.

This Court, therefore, is of the opinion that there is no error of jurisdiction or illegality in the impugned and the non consideration of the objection raised by the petitioner in his two petitions has not resulted in any prejudice to the petitioner.

The revision application is accordingly dismissed.

(V. Nath, J.)

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