

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3944 of 2014

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Sabitri Devi & Ors

.... Petitioner/s

Versus

Shanti Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arjun Pd. Keshri

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 4 18-12-2015 **1.** Heard the learned counsel, Mr. Arjun Prasad Keshri, on behalf of the petitioner and the learned counsel Mr. K.K. Ghosh on behalf of the plaintiff-respondent on the interlocutory application No.5024 of 2015 which has been filed by the heirs of the respondent No.1 for being substituted in place of the deceased respondent No.1. This application is allowed and the legal representatives are substituted. The learned counsel, Mr. K.K. Ghosh has already appeared on their behalf.
- 2.** At the time of hearing of the interlocutory application, both the learned counsels submitted that the writ application itself may also be heard in admission matter on merit. Accordingly, I heard them on merit in admission matter.
- 3.** This application has been filed by the petitioners against the Order dated 24.10.2013 passed by Sub Judge III, Saharsa in

Title Suit No.24 of 1989 whereby the application filed by the plaintiff respondent in the Court below for deleting the name of the deceased defendant No.2 has been allowed.

4. It appears that partition suit was filed by the plaintiff respondent. Defendant No.1 and 2 filed joint written statement. Thereafter, on the death of the defendant No.2, the plaintiff respondent herein filed an application praying for deleting the name of defendant No.2 on the ground that he has not prayed any relief against the defendant No.2. Rejoinder was filed by the defendant No.1 against the said application and prayed that the other legal representatives of the deceased defendant No.2 may be added as party defendant in the suit. The Court below allowed the application filed by the plaintiff respondent. The other legal representatives of the deceased defendant No.2 who never appeared before the Court below nor filed any application for being added / substituted in place of the deceased defendant No.2 have filed this application under Article 227 of the Constitution of India along with the defendant No.1.

5. The learned counsel for the petitioner submitted that since the defendant No.2 had filed joint written statement along with defendant No.1, his legal representative should have been

substituted by the plaintiff but in the Court below, although the defendant No.1 filed the rejoinder objecting to the deletion of defendant No.2, the Court below erroneously allowed the deletion of the name of defendant No.2.

6. On the other hand, the learned counsel, Mr. K.K. Ghosh appearing on behalf of the plaintiff respondent submitted that in fact the plaintiff has not claimed any relief against defendant No.2. Therefore, the plaintiff filed the application for deletion of the name of defendant No.2. The legal representatives of the deceased defendant No.2 never approached the Court below and have never filed application for being added as party in the Court below. Moreover, they are not necessary party because the plaintiffs are not claiming any relief either against them or against the defendant No.2 who has died, therefore, it is not necessary to substitute the legal representatives of the deceased defendant No.2. Further one of the son of deceased defendant No.2 is already on record, who is the purchaser of the property.

7. Perused the order passed by the Court below. It appears that the application filed by the plaintiff has been allowed. The plaintiff prayed for deletion the name of defendant No.2. One of the son of the defendant No.2 is already on record as defendant

No.1. The admitted fact is that this defendant No.1 is the purchaser of the property and so far other heirs of deceased defendant No.2 are concerned, they are not purchaser and defendant No.2 was also not purchaser according to the plaintiff. It is submitted by the defendant No.1 that defendant No.2 had given the money. So far this question is concerned, it is a matter between the defendant No.1 and defendant No.2 and their heirs.

8. In view of the above fact that the petitioners, except the petitioner No.2, did not approach the Court below for being added as party, the impugned order, whereby the application filed by the petitioner has been allowed cannot be said to be either without jurisdiction or by that order grave injustice has been done or it occasion any failure of justice. Therefore, the impugned order cannot be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed. The other interlocutory applications accordingly disposed of.

(Mungeshwar Sahoo, J)

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