

Raman Kumar Yadav S/O Late Raghunath Yadav Resident Of Village-
Damagara, P.S.- Dhamdaha, Dist- Purnea **Petitioner.**

1. Jaideo Yadav S/o Ajodhi Yadav.
2. Giridhar Yadav S/o Ajodhi Yadav.
3. Hari Lal Yadav Son of Ajodhi Yadav.

4. a. Gulabchandra Yadav.
b. Subhas Chandra Yadav.
c. Kapil Yadav.
d. Vakil Yadav.
e. Gajen Yadav.

All residents of village-Admgara, P.S.-Damdaha, District-Purnia and one daughter Kalapet W/o Navin Yadav, Resident of Village-Bhotia, P.S.-Dhamdaha, P.O.- Damgara, District-Purnia.

Appearance :

For the Petitioner/s : Mr. Nageshwar Prasad Sinha
Mr. Shiv Shankar Prasad

For the Respondent/s : Mr.

17 11-03-2015

Heard Mr Nageshwar Prasad Sinha, the learned
counsel appearing for the petitioner and Mr W.Rahman, the
learned counsel appearing for the opposite parties.

This application has been filed by the heir of deceased respondent no.1-Raghunath Yadav for recall of the

judgment and order dated 20.03.2009 passed in S.A.No.181/1994 by which the aforesaid second appeal has been allowed.

The case of the petitioner is that the respondent no.1-Raghunath Yadav of S.A.No.181/1994 died on 07.03.2008 and his heirs and legal representatives were not substituted in the appeal which was taken up for hearing on 26.02.2009 and thereafter disposed of by judgment and decree dated 20.03.2009 on which dates the respondent no.1 was dead and his heirs were not on record. In the aforesaid circumstance the prayer has been made for recalling the said judgment and order in the second appeal and place the appeal for hearing afresh.

The aforesaid facts have not been disputed by the opposite parties who were appellants in the appeal.

The learned counsel for the petitioner has submitted that the present petitioner is son of the deceased respondent no.1 and after the demise of the respondent no.1 he was vitally interested in the result of the appeal and a necessary party to the appeal but the appeal has been allowed behind his back and without bringing him on record as respondent. It has, therefore, been prayed that this application be allowed and the appeal be heard afresh after recall of the aforesaid judgment and order.



Mr Rahman, the learned counsel for the opposite parties, however, has opposed the prayer and has propounded that at the time of hearing of the second appeal the learned counsel for the respondent no.1 had been fully heard and the appeal was allowed after consideration of the rival cases of the parties to the appeal. It has, therefore, been canvassed that in this fact and circumstance, there is no prejudice to the petitioner and there is no valid reason for recall of the judgment and order passed in second appeal. It has also been submitted that the appellants in second appeal would unnecessarily be harassed, if the appeal is directed to be heard afresh. The learned counsel has also relied upon the decisions in the case of **P.M.A.M. Vellayan Chetty Vs Jothi Mahalinga Aiyer, 1915 I.C. (28)83** and in the case of **(Thamarapalli)Surya Narayana Vs (Gopavajhala) Joga Rao, 1930 Madras 719**, in support of his contention that if a party who has been fully heard then the prayer on his behalf for grant of opportunity of rehearing should not be allowed.

After considering the facts and circumstances of the case and submission on behalf of the parties, it is limpid that the respondent no.1 (since deceased) in S.A.No.181/1994, was one of the defendants in the suit filed by the plaintiff-opposite parties. The said suit was decreed. The respondent no.1- Raghunath Yadav



thereafter alone preferred the appeal against the judgment and decree, and after hearing the parties, the said appeal was allowed. The second appeal thereafter was preferred by the plaintiffs in which the defendant Raghunath Yadav was impleaded as respondent no.1. It is thus transparent that the decree by the appellate court below was in favour of the respondent no.1 Raghunath Yadav as he was the sole appellant therein. As the fact of death of the respondent no.1-Raghunath Yadav on 07.03.2008 during the pendency of the second appeal has not been disputed, it is beyond cavil that the second appeal had been heard and decided on 20.03.2009 against the dead respondent on record. The fact that the deceased respondent no.1 was a necessary party to the appeal has not been disputed by the appellant-opposite parties and it has also not been disputed that the deceased respondent no.1 has left behind his son (the present petitioner) as his heir who was not substituted in the appeal after the death of the respondent no.1. The conclusion is inevitable that the judgment and decree passed on 20.03.2009 in S.A.No.181/94 in this fact and circumstance is a nullity.

The decisions relied on by Mr Rahman, the learned counsel for the plaintiff-opposite parties, in the case of **P.M.A.M. Vellayan Chetty (Supra)** and in the case of

(Thamarapalli)Surya Narayana (Supra) have been rendered in different settings of fact where the party who was alive and who had been heard in the matter had prayed for rehearing on the ground that his opponent was dead on the date of hearing and it was in that circumstance that the prayer was declined. In the present case the petitioner of this application who is admittedly the heir of the deceased respondent no.1 Raghunath Yadav was not brought on record by substitution after the death of respondent no.1-Raghunath Yadav which occurred much before the appeal was taken up for hearing. As such, this Court is not inclined to accept the contention of the plaintiff-opposite parties that the appellants of the second appeal would suffer injury and harassment if the judgment and decree dated 20.03.2009 passed in the second appeal is recalled and the appeal is posted for hearing afresh.

This application is, therefore, allowed and the judgment and decree dated 20.03.2009 passed in S.A.No.181/1994 is hereby recalled and it is directed that the appeal be posted for hearing in accordance with law.

(V. Nath, J)

Nitesh/-

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