

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.559 of 2010

1. Daroga Prasad

2. Bhola Prasad

both sons of late Girwar Prasad, R/o Village- Kuari Aazam, P.O.- Baksanda,
Via- Parsa, P.S.-Bheldi, District –Saran.

.... Defendants/Appellants/Appellants

Versus

1. Mohan Prasad

2. Raj Kumar Prasad

3. Deo Kumar Prasad

All sons of late Badri Prasad, R/o Village-Kuari Aazam, P.O.-Baksanda, Via-
Parsa, P.S.-Bheldi, District-Saran.

4. Chinta Devi, wife of Chandradeo Prasad, daughter of late Badri Prasad, resident
of Village- Bishunpura, P.O.-Aphaur, P.S.-Amnour, district-Saran.

5. Smt Lalo Devi, wife of Hakim Prasad, daughter of late Badri Prasad, resident of
Village _Dehuri Takhat, P.O.-Dehuri, P.S.-Taraiyan, District-Saran.

6. Sanchita Devi, wife of Hulas Prasad, daughter of late Badri Prasad, resident of
village and P.O.-Dehuri, P.S.- Taraiyan, District-Saran.

7. Smt. Sita Devi, wife of Ramjit Prasad, daughter of late Badri Prasad, resident of
Village-Pithaghat Rampur, P.O. and P.S.- Garkha, District- Saran.

-----Plaintiff/Respondents/1st Set

8. Puhkal Prasad, son of late Jiyalal Prasad, resident of Village – Kuari Aagam,
P.O.- Baksanda, via- Parsa, P.S.- Bheldi, District –Saran.

-----Defendant/Respondent/Respondent/2nd Set

9. Sitaram Prasad, son of late Girwar Prasad

10. Smt. Somaro Devi, wife of Tulsi Prasad, daughter of late Girwar Prasad

11. Jamadar Prasad

12. Surendra Prasad

Both sons of Late Kailash Prasad

13. Aasha Kumari, daughter of Kailash Prasad

Respondent nos. 9 to 13, resident of village –Kuari, Aazam, P.O. –Baksanda,
Via- Parsa, P.S.-Bheldi, District –Saran.

-----Defendants/Appellants/Respondent 3rd Set

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagendra Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 03-02-2015

Heard learned counsel for the appellant. None appeared on behalf of respondents in spite of earlier appearance and adjournment granted.

2. This is an Appeal preferred against order dated 13th April 2010 passed in T.A. No.43 of 2001 by 3rd Additional District Judge (Fast Track Court), Saran at Chapra refusing the prayer on behalf of defendant appellant seeking substitution of heirs of defendant no.4, Sipahi Prasad, respondent no.5 Meghnath Prasad, who respectively died on 28.10.2005 and 26.11.2008 and also seeking deletion of names of respondent no.4 Jamuni Devi, appellant no.6 Deepjhari Devi, who respectively died on 12.08.2007 and 27.04.1998 since their respective heirs are already on record.

3. Earlier petition was filed on 27.07.2009 but, since there were some clerical errors, it was not pressed after filing fresh application on 24.02.2010.

4. As it appears from the order impugned that copy

of the subsequent petition was not served upon the learned counsel representing other side, who though was present at the time of hearing but also raise no objection. In spite of the above, the learned Court below refused the prayer.

5. It is pointed out that an attempt was made to serve copy of the petition to learned counsel who could not be made available so with the endorsement to the effect stated above copy was attached and petition was filed before the Court below.

6. On perusal of the record, submission finds substance copy of petition is still on the record with due endorsement stated above. True it is, unless copy of the petitions are not served upon the appearing defendant/respondents normally they cannot be entertained but under special circumstances like present one copies may be attached with the original to be served upon them for further needful.

7. In view of the above, it was incumbent upon the Court below while noticing no copy was served but get it immediately served upon the counsel representing other side and do the needful but nothing of the kind appears done in the present case rather for refusal of the prayer non-service of the copy has also been taken as one of the grounds.

8. The appellants have taken a plea of lack of

knowledge about the legal requirement and procedures to substitute heirs of deceased parties to the suit/appeal and when the matter was listed for hearing, on general enquiry, by the learned counsel representing them they intimated about death of respective parties and, subsequently, on legal advice filed petitions.

9. It is also contended that heirs of all the deceased are on record. Of course, Class-I heirs are sought to be impleaded but Class-II heirs are on record. Reliance is placed on a full Bench decision of this Court rendered in the case of ***Yogendra Bhagat and Ors. Vs. Pritlal Yadav and Ors.*** reported in ***2009(3) PLJR 697*** .

10. No doubt, some delay appears caused in taking due steps but same has been explained and the appellants being rustic one deserves some lenient view. However, they are to pay some penalty for such delay caused.

11. Consequently, subject to deposit of Rs.2,000/- (Two thousand) with the District Legal Services Authority, Saran at Chapra within a month from today, impugned order dated 13th April 2010 passed in T.A. No.43 of 2001 by 3rd Additional District Judge (Fast Track Court), Saran at Chapra is set aside and the application dated 24.02.2010 is allowed with a further

direction to file requisites for notice upon proposed heirs of the deceased positively within a week of deposit of the money aforesaid, failing which their prayer shall again be treated refused.

12. Let Lower Court Records be sent back to the Tribunal below for further needful immediately.

(Akhilesh Chandra, J)

Ashwini/-

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