

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16013 of 2012

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Sanjay Choudhary son of Late Gouri Shankar Choudhary, resident of Burhanath Road, Police Station Kotwali, Town and District Bhagalpur, presently residing at 58 KEB Lay out 5 Main 3rd Cross, Sarjay Nagar, Bangalore 94 in the State of Karnataka

.... Petitioner

Versus

1. Sri Radha Krishna Choudhary Son Of Late Chandra Pd. Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
2. Sri Ghanshyam Das Choudhary Son Of Late Chandra Pd. Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
3. Srimati Sakuntala Devi Choudhary Wife Of Sri Radha Krishna Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
4. Srimati Bimla Devi Choudhary Wife Of Sri Radha Krishna Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
5. Srimati Reeta Choudhary Wife Of Sri Rajendra Choudhary Alais Rajesh Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
6. Srimati Umang Choudhary Wife Of Sri Gopal Choudhary Resident Of Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
7. Srimati Rama Devi Jhunjhunwala Wife Of Sri Santosh Kumar Jhunjhunwala Resident Of Mohalla Khalifabagh Burhanath Road, Police Station Kotwali, Town And District Bhagalpur
8. Sri Banwarilal Munka Son Of Late Hari Prasad Munka Resident Of Mohalla Khalifabagh, Dr. Rajendra Pd. Road, Police Station Kotwali, Town And District Bhagalpur
9. Srimati Kiran Devi Munka Wife Of Sri Arun Kumar Munka Resident Of Mohalla Khalifabagh, Dr. Rajendra Pd. Road, Police Station Kotwali, Town And District Bhagalpur
10. Srimati Anita Agrawal Wife Of Sri Rajesh Agrawal Resident Of Mohalla Khalifabagh, Dr. Rajendra Pd. Road, Police Station Kotwali, Town And District Bhagalpur
11. Sri Jai Prakash Jain Son Of Late Murlidhar Jain Resident Of Mohalla Kharamanchak, D.N. Singh Road, Under Police Station Kotwali Town And District Bhagalpur
12. Srimati Pushpa Sinha Wife Of Sri Anil Kumar Sinha Resident Of Mohalla Jogsar Chandi Pd. Lane Police Station Kotwali Town And District Bhagalpur
13. Srimati Draupadi Devi Bhuwania W/O Sri Ram Chandra Bhuwania Resident Of 552 New Alipur Block No. N Kunti Apartment, Calcutta 700027
14. Laxmi Devi Nathani W/O Shankar Prasad Nathani, Saraiyaganj, Sutta Patti, Muzaffarpur- 842001
15. Gayatri Devi Maskara W/O Raghunath Pd. Maskara, Maskara Sadan, Kana Road, Ranchi- 8

16. Prema Devi Jhunjhunwala W/O Shiv Narayan Jhunjhunwala Resident Of Jain Mandir Lane, Police Station Kotwali District Bhagalpur
17. Raj Kumar Goenka W/O Late Girdharu Lal Goenka Resident Of 9th Floor, Himadri Building 22 Balleyganj Park Road, Calcutta- 700029
18. Saroj Devi Kajriwal W/O Ramesh Kajriwal Resident Of 52, Jakaria Street, Calcutta 700073
19. Sunita Jhunjhunwala W/O Ashok Kumar Jhunjhunwala D/O Late Gouri Shankar Choudhary Resident Of Basant Bihar Colony Road, Patna
20. Sunil Choudhary S/O Mahabir Pd. Choudhary Resident Of Burhanath Road, Police Station Kotwali, District Bhagalpur Presently Residing At 20/6 N.S.C. Bata Road Tallyganj Kolkatta- 700040 (East Bengal)
21. Pawan Kumar Sharma Son Of Late Rama Nand Sharma Resident Of Mohalla Sonapatti Anant Ram Lane, Police Station Kotwali, District Bhagalpur
22. Lila Devi Choudhary W/O Late Gouri Shankar Choudhary
23. Sri Mahabir Choudhary Son Of Late Chandi Prasad Choudhary Resident Of Burhanath Road, Police Station Kotwali, In The Town And District Bhagalpur, Presently Residing At 40, South End Park, Calcutta- 700029 In The District Of Calcutta And In The State Of West Bengal
24. Srimati Pushpa Devi Choudhary Wife Of Sri Mahabir Prasad Choudhary Resident Of Burhanath Road, Police Station Kotwali, In The Town And District Bhagalpur, Presently Residing At 40, South End Park, Calcutta- 700029 In The District Of Calcutta And In The State Of West Bengal

.... Respondents

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Appearance :

For the Petitioner : Mr. Satish Narayan Sinha, Advocate
For the Respondent No.21: Dr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 11-12-2015 Heard learned counsel for the petitioner as well as learned counsel representing respondent no.21. I have gone through the order impugned.

Whenever there happens to be cross objection, the same is to be treated as a plaint in terms of Order 8 Rule 6A(4) of the C.P.C. having independent identity wherein the status of the defendant happens to be that of plaintiff and for that, a separate

court fee inconsonance with the relief so sought for, is to be paid.

In the present case, the learned lower court had considered the aforesaid thing having advanced on behalf of defendant but failed to construe as well as acknowledge the separate independent identity thereof and that happens to be reason behind the prayer of the petitioner for withdrawing the suit has been rejected by the learned lower court through the order impugned. Whatever assertion has been made in the petition for withdrawal, that has got no relevancy because of the fact that the aforesaid petition is not the petition of compromise. It happens to be mere an advancement to testify withdrawal and basically, the act of withdrawal is to be taken into account.

That being so, the order impugned is set aside. The petition is allowed.

(Aditya Kumar Trivedi, J)

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