

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18853 of 2010

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1. Janardan Prasad Bhimsaria @ Janardan Bhimsaria S/O Late Gopal Prasad Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa

.... Petitioner

Versus

1. Bhimsaria Dharamsala Through Its Trusty (Custodian) Narayan Prasad @ Narayan Prasad Bhimsariya S/O Late Madan Lal Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
2. Narayan Prasad @ Narayan Prasad Bhimsariya S/O Late Madan Lal Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
3. Mahadeo Prasad S/O Late Madan Lal Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
4. Brahmanand Prasad S/O Late Madan Lal Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
5. Sankar Prasad Bhimsaria Adopted S/O Ramdeo Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
6. Kailash Bhimsaria S/O Late Radheshyam Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
7. Madhav Prasad Bhimsaria S/O Late Radheshyam Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa
8. Lila Devi W/O Late Radheyshyam Bhimsaria R/O Mohalla- Saharsa Municipal Area, Ward No.2, Distt.- Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 03-08-2015 Mr. Jha learned counsel presses I.A. No. 1314 of 2014, which has been filed for substitution of the sole plaintiff-petitioner by his heirs and legal representatives set out in para 3.

It has been stated that the plaintiff-petitioner died on 12.10.2013 whereas the present application has been filed on 14.02.2014. He further submits that the cause survive even after the death of the sole plaintiff-petitioner. It appears that along with the application 'Vakalatnama' on behalf of the heirs and legal

representatives of the deceased plaintiff-petitioner has been filed.

Having considered the statements made in the application and the submissions made in support thereof , the same is allowed. Let the name of sole petitioner-plaintiff be deleted and in his place his heirs and legal representatives set out in para 3 be substituted.

Heard learned counsel for the plaintiff-petitioner.

The application seeks to assail the order dated 25.09.2007 passed by the learned Sub- Judge-III, Saharsa in Title Suit no. 25 of 1993 (Janardan Bhimsaria & Ors. Vs. Bhimsaria Dharamsala & Ors.).

The suit was lodged in 1993. The plaintiff produced documents in support of the case in the year 2003. The defendants filed written statement and produced certain documents, list whereof was served on plaintiff-petitioner on 4.3.2003. No issue was raised soon thereafter . The Court was allowed to proceed further with the trial inasmuch as the evidence of the plaintiff as well as the defendants was allowed to be concluded. The case was posted for argument. At this juncture, the petitioner filed an application on 31.08.2006 seeking permission of the Court to produce document in the shape of information supplied to the petitioner disclosing that the parwangi and the jamabandi receipt submitted by the respondent was/were forged. The learned court below considered the said application and rejected by the

impugned order stating that the same was nothing but a ploy to delay the disposal of an old case pending on the file of the Court since 1993. The court also noticed the fact that no issue in this regard was raised by the plaintiff when the list of documents was served on the plaintiff in the year 2003. The trial was allowed to proceed and now at the stage of final argument aforesaid application was filed.

Learned counsel for the petitioner made diverse submissions. It has been submitted that the trial has not proceeded further on account of pendency of this matter before this court since 2007 when civil revision application was filed which was later converted into the present writ petition.

In my view, the court below has not committed any patent illegality by passing the impugned order rejecting the said prayer of the plaintiff. That apart, if the document is so important and necessary, the plaintiff-petitioner may have an opportunity to request the appellate court for permitting him to adduce additional evidence if the verdict of the trial goes against the plaintiff.

The application is dismissed.

(Kishore Kumar Mandal, J)

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