

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8288 of 1998

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- 1(A). Sk.Fajju @ Sk Rafique
1(B). Sk. Safique
1(C) Sk. Shakoor
2(i) Md. Shaheed
2(ii) Md. Yusuf
2(iii) Md. Siddique
2(iv) Md. Wakeel
2(v) Md. Tubla
2(vi) Md. Nezam (substituted by the present order)
2(vi)(a) Maimun Nesa, wife of Md. Nezam
2(vi)(b) Gulbahar, minor son of late Md. Nezam
2(vi)(c) Nawab Sharif, minor son of late Md. Nezam
2(vi)(d) Ruby Khatoon, minor daughter of late Md. Nezam

Under the guardianship of mother Mamun Nesa and are residents of Village-Hassanpur, P.S. Raniganj, District- Araria.

- 2(vii) Md. Mahfooz (substituted by the present order)
2(vii)(a) Momina Khatoon, wife of late Md. Mahfooz
2(vii)(b) Md. Sajjad, son of late Md. Mahfooz
2(vii)(c) Md. Azad, son of late Md. Mahfooz

All are residents of Village- Hassanpur, P.S. Raniganj, District- Araria.

- 2(vii)(d) Ladli Praveen, wife of Md. Rabban and daughter of Md. Mahfooz, resident of Village- Ghoraha, P.S.-Raniganj, District- Araria.
2(vii)(e) Razia Praveen (Minor) daughter of late Md. Mahfooz under guardianship of mother Momina Khatoon, resident of village- Hassanpur, P.S. Raniganj, District- Araria.
2(viii) Bibi Tetari

(All are sons and daughter of original petitioner no.2 Sk. Ali Hasan) and are resident of Village- Hassanpur, P.S. Raniganj, District- Araria.

- 3(i) Md. Maffor
3(ii) Md. Ghaffar
3(iii) Md. Jabbar
3(iv) Md. Zubair
3(v) Rokhsana Khatoon, w/o Md. Wasil
3(vi) Amina Khatoon, W/o Md. Alam.

All are sons and daughters of original petitioner no.3 Sk. Md. Mahmood and are residents of Village- Hassanpur, P.S.- Raniganj, District- Araria.

4. Sk. Kalam
5. Sk. Alam (substituted by the present order)
5(i) Md. Afsar Ahmad, son of late Sk. Alam.
5(ii) Md. Shahnawaz (minor) son of late Sk. Alam under guardianship of brother Md. Afsar Ahmad and are residents of Village- Hassanpur, P.S. Raniganj, District- Araria.
5(iii) Khushbu, wife of Shamsher & daughter of Late Sk. Alam, resident of Village- Champanagar, P.S.- Sarfi, District- Purnea.
5(iv) Shaheen Praveen (minor) daughter of late Sk. Alam, under guardianship of brother Md. Afsar Ahmad, resident of Village- Hasanpur, P.S.- Raniganj,

District- Araria.

6. Sk. Ishaque

7. Sk. Quddus

All are sons of Late Sk. Chhotku and are residents of Village- Hassanpur, P.S. Raniganj, District- Araria

8. Md. Salim, son of Md. Wakil.

9. Md. Shamser

10. Tamzer

11. Bibi Gulshan

Minor sons and daughter of Md. Salim, represented through their father.

All are residents of Village- Masuria, P.S. Sarsi, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.

2. The Sub-Divisional Officer, Araria, District- Araria.

3. The Sub-Divisional Officer, Forbisganj, District- Araria.

4. The Anchal Adhikari, Raniganj, P.S. Raniganj, District- Araria.

5(i) Md. Rizwan

5(ii) Md. Imran

5(iii) Md. Saibul

5(iv) Md. Atiullah

All are sons and legal heirs of original respondent no.5 Bibi Masuda Khatoon and are residents of Village- Rampur, P.S. Raniganj, District- Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Anish Akhtar

Mr. Nadimul Hasan

Mr. Md.Rashid Alam

Mr. Md.Mehar Iqbal

For the Respondent/s : Mr. (GP2)

For the private respondents: Mr. Bidhanesh Mishra

Mr. Dharendra Kumar Jha

Mr. Jibendra Mishra

Ms. Pallavi Mishra

Mr. Rajendra Kumar Jha

Ms. Tanya Mishra

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-05-2015

Re: I.A. No. 4172 of 2015

This interlocutory application has been filed for expunging the names of petitioner 2(vi) Md. Nezam, petitioner



no.2(vii) Md. Mahfooz and petitioner no.5 Sk. Alam who died on 18.6.2012, 25.07.2013 and 12.11.2008 respectively and for substituting their respective legal heirs in their place whose names are mentioned in paragraphs 2, 3 and 4 respectively of this interlocutory application and their Vakalatnama is on record.

Having heard learned counsel for the parties and considering the circumstances the prayer is allowed. Let the names of deceased petitioner nos.2 (vi), 2(vii) and 5 be expunged from the writ petition and be substituted by their legal heirs named in paragraphs 2, 3 and 4 respectively of this interlocutory application.

I.A. No.4172 of 2015 stands allowed.

Re: CWJC No.8288 of 1998:

Heard Mr. Anish Akhtar, learned counsel appearing on behalf of the petitioners, Mr. Bidhanesh Mishra, learned counsel appearing for the private respondents and learned counsel for the State.

Although the facts of the case is accompanied with a lot of swings but briefly stated the matter in issue is that even while the appeal filed by the writ petitioners arising from an order passed by the statutory authority under section 48-D of the Bihar Tenancy Act (hereinafter referred to as 'the Act') was yet pending before the appellate authority i.e. the Sub-Divisional Officer in Appeal No.45



of 1993-94 that a fresh proceeding has again been initiated by him under section 48-D of 'the Act' to get an ex-parte order in his favour. The appellate authority, i.e. the Sub-Divisional Officer has considered the entire matter in the backdrop that an appeal on identical lines remains pending in Appeal No.45 of 1993-94 to pass the impugned order and to set aside the order passed by the Circle Officer dated 15.7.1995.

It is but obvious that where the appeal of the petitioner in the same matter was yet pending before the Sub-Divisional Officer in Appeal No.45-1993-94, it was an abuse of the process of the court by the petitioners to invoke a second round litigation to get an ex-parte order in their favour on 15.7.1995 while the said appeal remained pending. In the circumstances discussed the order of the appellate authority on the appeal preferred by the private respondents bearing Appeal No.129 of 1998-99 suffers from no infirmity warranting any interference.

The writ petition is accordingly disposed of. The writ petitioners if so advised may pursue their pending appeal provided it is yet pending.

(Jyoti Saran, J)

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