

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.635 of 2014
IN
Civil Writ Jurisdiction Case No. 8743 of 1991

=====

Ramasray Ray, S/o Late Tippan Rai, Resident of Kanhauli Bishanpur Parsi, P.S. Mahua, District - Vaishali

.... Appellant/Petitioner

Versus

1. The State of Bihar
2. Joint Director, Consolidation, Muzaffarpur
3. Assistant Director, Consolidation, Vaishali
4. Consolidation Officer, Gorour, P.S. Gorour, District - Vaishali
5. Ram Chandra Rai, Son of Bahadur Rai
6. Shivji Rai, S/o Late Rameshwar Rai
7. Nageshwar Rai S/o late Rameshwar Rai
8. Nand Lal Rai S/o Late Laxmi Rai
9. Chandeshwar Rai S/o Late Laxmi Rai
10. Kameshwar Rai S/o Late Laxmi Rai
11. Anil Kumar Jaiswal, S/o Late Kedar Nath Choudhary, All Resident of village – Kanhauli, Bishanpur, Parsi, P.S. Mahua, District - Vaishali

.... Respondents/Respondents

=====

Appearance :

For the Appellant : Mr. Ashok Kr. Singh, Sr. Adv.
Mr. Kunal Tiwary, Adv.

For the Respondents : Mr. Chandra Shekhar Singh, AC to GP 16

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 26-02-2015

The appellant herein filed C.W.J.C. No.8743/91, challenging an order passed by the authority under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. Apart from the authorities of the Government, respondent Nos.5, 6, 7 and 8, private individuals, were also impleaded. Those respondents, in

turn, are said to have filed representation before the authority in their representative capacity, but not claiming any individual rights in the land in question.

The petitioner filed I.A. No.8259/12, stating that during the pendency of the writ petition respondents 5, 6 and 8 died and that their legal representatives be brought on record. The I.A. was opposed mainly by the respondent No.7. His plea was that the application was not filed in time and the death certificate in respect of one of the deceased persons is forged one. Learned single Judge dismissed I.A. No.8259/12, and thereby the writ petition itself, through order dated 16.8. 2013.Hence, this Letters Patent Appeal.

Heard Shri Ashok Kumar Singh, learned senior advocate the appellant, and Shri Chandra Shekhar Singh, learned counsel for the respondents.

The dismissal of the writ petition was not on merits. Rather it was on account of rejection of an application filed for substitution, seeking permission of the Court to bring the legal representatives of respondents 5, 6 and 8, on record.

It is, no doubt, true that the application was filed long after the death of the three respondents mentioned above. Much, however, depends upon the date on which the

appellant came to know about the death of the respondents 5, 6 and 8.

Realizing that there is every possibility of a party to the proceedings not being aware of the death of the other party, the Parliament introduced Rule-10A in Order XXII of C.P.C. which reads:

“[10A. Duty of pleader to communicate to Court death of a party:

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]”

From a perusal of the provision, it becomes evident that a duty is cast upon the counsel of a party in a proceeding to intimate to the Court, in case the party whom he represents dies during the pendency of the proceedings. The Court, in turn, is placed under obligation to require the opposite party, i.e. the party other than the one which died, to take necessary steps. In a given case, not only the date of death, but also the particulars of the legal representatives of the deceased party, are required to be furnished. No such effort was made in this case. Simply by stating that there was delay in filing the application for bringing the legal representatives on record, the I.A. was dismissed and the

writ petition was dismissed.

We are of the view that the order passed by the learned single Judge cannot be sustained in law. Since it emerged that no intimation, whatever, was given by the learned counsel representing respondents 5, 6 and 8 about their death, I.A. No.8259/12, deserved to be allowed. Though respondents 5, 6, 7 and 8 are said to have participated in the proceedings only in representative capacity, four week time is granted to the legal representatives of respondents 5, 6 and 8, to enter their appearance if they so choose.

The L.P.A. is accordingly allowed. The order under appeal is set aside. The writ petition is restored and I.A. No.8259 of 2012 is ordered. The writ petition shall be disposed of on merits, without any further delay.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

K.C.jha/-
A.F.R.

U			
---	--	--	--