

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4707 of 2011

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1. Ajay Bikram Singh S/O Late Saryug Prasad Singh, Adopted Son Of Late Yamuna Prasad Singh R/O Mauza Amha Tola-Jitkiyahi, P.S.Pipra, Distt-Supaul.

.... Petitioner/s

Versus

1. Raj Kumar Chouhan @Ramdeo Singh S/O Late Harsh Narayan Singh R/O Ward No.7, P.S.+P.O.Supaul, Distt-Supaul

2. Ram Pratap Singh S/O Late Harsh Narayan Singh R/O Ward No.7, P.S.+P.O.Supaul, Distt-Supaul

3. Rajendra Prasad Singh S/O Late Harsh Narayan Singh R/O Ward No.7, P.S.+P.O.Supaul, Distt-Supaul

4. Birendra Kumar Singh S/O Late Harsh Narayan Singh R/O Ward No.7, P.S.+P.O.Supaul, Distt-Supaul

5. Narendra Prasad Singh S/O Late Harsh Narayan Singh R/O Ward No.7, P.S.+P.O.Supaul, Distt-Supaul

6. Binda Devi W/O Sri Suresh Prasad Singh R/O Takia, Danapur, P.S.Danapur, Distt-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrit Abhijat

Mr. Upendra Yadav

For the Respondent/s : Mr. Kamal Nayan Choubey, Sr. Advocate

Mr. Ashok Kumar Garg.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 01-09-2015

Heard Mr. Abhijat for the petitioner and Mr. Kamal Nayan Choubey for the respondents.

The petitioner, claiming himself to be the nephew as well as adopted son of the deceased original plaintiff namely Yamuna Prasad Singh, filed an application dated 24.12.2008 (Annexure-2) on the death of the sole original plaintiff for being substituted in order to prosecute the Title Suit No. 372 of 1991 filed by the original deceased plaintiff in representative capacity questioning entry of the suit land in



the name of the principal defendant and to declare it wrong and further a declaration that the property is the joint family property over which the descendents of Late Harinandan Prasad Singh shall have share. The Trial Court finding that the deceased had one daughter who had sons who were not applicants and also the fact that the petitioner not only claimed himself to be the representative of the joint family but also the adopted son of the deceased plaintiff without there being any registered adoption deed, rejected the said application. The present writ petition filed thereagainst remained pending in this Court and the Trial Court by a subsequent order dated 06.11.2013 held the suit itself has abated as no one was substituted in place of the sole deceased plaintiff.

It has been contended on behalf of the petitioner that the application for substitution was filed not only in the capacity of the adopted son of the deceased plaintiff but also as the representative of the other co-parceners of the joint Hindu family. Indisputably, in the suit property of the joint Hindu family, any co-parcener or co-sharer of the family could have filed such application for substitution. In this regard, he has drawn attention to the relevant facts pleaded in the plaint.

Mr. Choubey conversely submitted that the petitioner did not approach the Court with clean hands. He projected himself as the



adopted son of the sole deceased plaintiff which is directly in contradiction of his claim as one of the co-parceners or co-sharers having share in property of joint Hindu family. If that be the case then this Court should not exercise its discretionary jurisdiction and grant the relief particularly when the suit itself has been held to have abated by subsequent order passed by the Court against which an application can be filed and maintained under Order XXXII Rule 9 of the Code of Civil Procedure (for short 'the Code') for setting aside the abatement by anyone claiming himself or themselves as the legal representative of the sole deceased plaintiff. Legal representative is defined under Section 2(11) of the Code which means and denotes a person who in law represents the estate of the deceased person and includes any person who intermeddles with the estate of the deceased.

Mr. Choubey in support of his submission has relied on ***AIR 1994 SC 853 (S.P. Chengalvaraya Naidu vs. Jagannath)*** wherein the Apex Court observed as under in paragraph 7:-

“7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law



are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.”

Mr. Abhijat, on the other hand, relied on *AIR 1973 Pat.*

164 in order to submit that in a suit filed in representative capacity, any co-parcener or co-sharer can file an application for substitution.

This Court, in view of the subsequent event taking place in the suit, would not delve into the submissions of the parties. Mr. Choubey has rightly pointed out that any person having legal interest in the suit property can file an application for setting aside the abatement and restoration of the suit. Mr. Abhijat, responding to the said submission, submits that appropriate application on behalf of the legal representative(s) of the deceased sole plaintiff which includes the writ petitioner also shall be filed for setting aside the abatement and for his/their substitution in the suit. Such application could not be filed earlier on account of pendency of the present writ application.

The writ application is accordingly disposed of with liberty to the legal representative(s) having interest in the subject matter of the suit in the light of pleadings made in the plaint to file an application for setting aside the abatement and/or any other

consequential relief. If any such application is filed within three (03) weeks, the same shall be considered by the Court below on its own merit and disposed of in accordance with law.

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(Kishore Kumar Mandal, J)