IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12864 of 2009

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Anil Kumar Singh, son of Late Braj Kishore Prasad Singh, resident of Janki Niwas, Kachhery Road, Police Station Town Begusarai and District Begusarai.

.... Petitioner/s

Versus

1. Bihar State Board of Hindu Religious Trust, through Special Officer, Vidyapati Marg, Patna.
2. Ayodhya Prasad Singh Trust (Estate) Nao Kothi, Begusarai, through Ram Chandra Prasad Shahi (newly substituted Secretary), son of Late Sadhu Sharan Prasad Shahi.
3. Gopal Prasad Singh, son of late Braj Kishore Prasad Singh.
4. Arvind Kumar Singh, son of late Braj Kishore Prasad Singh.

   Both Sr. Nos. 3 and 4 are resident of Janki Niwas, Kachhery Road, Police Station Town Begusarai and District Begusarai.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. J. K. Verma, Adv.
For B.B.R.T. : Mr. Ganpati Trivedi, Adv.
For Respondent No. 2 Mr. Ajit Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT

Date: 25-06-2015

1. Petitioner has prayed for setting aside the order dated 19.05.2009 passed in Case No. 01/1987/04/2008 by the learned Competent Authority, Patna by which and whereunder the

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learned Competent Authority, Patna allowed the substitution petition filed on behalf of one Sri Ram Chandra Prasad Shahi claiming himself to be Secretary of Ayodhya Prasad Singh Trust (Estate Nao Kothi, Begusarai) who has been arrayed in this petition as respondent no. 2 and accordingly, Ram Chandra Prasad Shahi was ordered to be substituted in place of deceased, Raj Nath Singh.

2. Shorn the unnecessary details, suffice to say that Case No. 01 of 1987 was filed before the Competent Authority, Patna by Ayodhya Prasad Singh Trust (Estate Nao Kothi, Begusarai) through its Secretary, Raj Nath Singh son of late Shiv Shankar Prasad Singh, resident of Village Barauni, Block No. 3, P.O. Barauni Deorhi, P.S. Teghra, Subdivision & District Begusarai against the original defendant Braj Kishore Prasad Singh @ Hira Jee, Sushila Devi, respondents no. 3 and 4 as well as petitioner for declaration that the disputed properties described in Schedule-2 of the plaint are the trust property and belong to Ayodhya Prasad Singh Trust, Begusarai and also for recovery of possession of the aforesaid property by getting evicted from possession of defendants no. 1 to 5 through the process of the Court.

3. The claim of the plaintiff in the aforesaid case is

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that one late Ayodhya Prasad Singh acquired huge properties in his own name as well as in the name of his employees and relatives. The disputed properties were acquired in the name of his employee, namely, Janki Prasad Singh who was also a distant relative of above stated Ayodhya Prasad Singh. Late Ayodhya Prasad Singh acquired five bighas, five kathas land in the name of Janki Prasad Singh but some portion of the aforesaid land was acquired by the government for construction of road and some portions of the said land were donated by Ayodhya Prasad Singh Trust to Ayodhya Sheo Kumari Ayurvedic College and out of five bighas, five kathas land, only 23.5 dhurs land described in Schedule-2 of the plaint remained with late Ayodhya Prasad Singh. The above stated Ayodhya Prasad Singh created a trust by a registered deed dated 11.04.1932 in respect of his entire properties including the aforesaid five bighas and odd land and by the said deed, he appointed himself and four others as trustees to manage all the properties included in trust deed but subsequently, said Ayodhya Prasad Singh revoked the trust deed of the year 1932 and created another public trust of his entire properties on 01.04.1945 for charitable purposes and seven persons were appointed as trustees thereof. The said late Ayodhya Prasad Singh was the first president of the trust and after his death, his wife became president

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of the aforesaid trust. The income of entire properties dedicated to the trust was to utilize in the religious, charitable, social and educational purposes. Besides the above stated purposes, some of the dependants of his relatives were to be maintained there by paying them specific amount. The aforesaid trust was registered under the provision of Bihar Hindu Religious Trust Board vide registration no. 98. There was specific provision in the trust deed of 1945 about the nomination/election of trustees in case of death of trustee or trustees and according to the aforesaid provision of the trust deed, Raj Nath Singh, the applicant/plaintiff as well as original defendant no. 1/ opposite party no. 1 and others were appointed trustees of Ayodhya Prasad Singh Trust.

4. Further case of the plaintiff/applicant is that late Ayodhya Prasad Singh got constructed house on the lands which had been purchased in the name of his employee, Janki Prasad Singh. The wife of late Ayodhya Prasad Singh was permitted to reside only in a portion of the house till her lifetime. The wife of late Ayodhya Prasad Singh was relative of original defendant no.1/opposite party no. 1 and the original defendant no. 1/opposite party no. 1 also started residing in the said house along with wife of late Ayodhya Prasad Singh as the wife of Ayodhya Prasad Singh being president of the trust permitted him to reside in the

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said house on payment of nominal rent but fraudulently and dishonestly, the original defendant no. 1/opposite party no. 1 got the name of his wife mutated in Begusarai Municipality in respect of holding of Ayodhya Prasad Singh Trust but subsequently, the aforesaid mutation was cancelled and a new holding was created and mutated in the name of Ayodhya Prasad Singh Trust by order dated 08.08.1983. Since the defendants/opposite parties are claiming their right and title in respect of above stated properties of Ayodhya Prasad Singh Trust, Raj Nath Singh being Secretary of the aforesaid trust filed above stated Case No. 01 of 1987.

5. During pendency of the aforesaid Case No. 01 of 1987, the then Secretary, Rajnath Singh died and after that one Sri Ram Chandra Prasad Shahi filed a substitution petition claiming himself to be Secretary of the aforesaid trust on the basis of resolution of the Committee as well as memo no. 1836 dated 03.07.2002 of the Bihar State Religious Trust Board. He also filed a petition for condoning the delay in filing the substitution petition.

6. Rejoinder to the substitution petition was filed on behalf of the defendants/opposite parties. The claim of the defendants/opposite parties is that the above stated Ayodhya Prasad Singh Trust is not in existence since 1976 as the entire trust

properties were vested in the State on 02.06.1976. It is also case of the defendants/opposite parties that all the documents filed by Ram Chandra Prasad Shahi are forged and fabricated documents as there was no existence of Committee after 1976.

7. The Bihar State Board of Hindu Religious Trust also filed rejoinder to the above stated substitution petition stating therein that Ayodhya Prasad Singh Trust is a public trust bearing registration no. 98 and the aforesaid trust is in existence since 1945. The Board further acknowledged this fact that Ram Chandra Prasad Shahi was nominated and became Secretary of Ayodhya Prasad Singh Trust in accordance with the procedure and provisions made in the trust deed itself. It has also been pleaded by the Board that the Board constituted its own Committee as per the terms of the deed and vide memo no. 1836 dated 03.07.2002, the same was communicated to the applicant, Ram Chandra Prasad Shahi but the then Chairman of the Board stayed the formation of Committee and order of the then Chairman of the Board was communicated to the applicant vide memo no. 2672 dated 15.09.2003 though the then Chairman of the Board was alone not competent to stay the formation of Committee by the Board and accordingly, the Board supported the claim of the applicant, Ram Chandra Prasad Shahi.

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8. The learned competent authority having perused the materials available on the record and having heard the parties passed the impugned order dated 19.05.2009 which is under challenge before this Court in the present writ petition.

9. Learned counsel appearing for the petitioner submits that from the very inception of the case, the stand of the petitioner and other defendants/opposite parties was that the Ayodhya Prasad Singh Trust had lost its existence in the year 1976 and after 1976, no Committee was constituted but the learned competent authority without giving any proper finding on the aforesaid point passed the impugned order which is liable to be set aside. He further submitted that applicant, Ram Chandra Prasad Shahi filed substitution petition on the basis of forged documents and the learned competent authority did not think even to call for the original documents and on the basis of photostat copy of the documents, passed the impugned order. He further submitted that the execution of the documents filed on behalf of Ram Chandra Prasad Shahi was completely denied by the petitioner but the learned competent authority ignored the aforesaid submission though there was onus upon the applicant, Ram Chandra Prasad Shahi to prove the aforesaid documents. In support of his contention, he referred a decision in which the Apex Court of this

country has held that onus lies on propounder of document and on person in dominant position in cases of undue influence.

10. Learned counsel for the petitioner further submitted that the learned competent authority completely ignored the provision of Order 22 Rule 5 of the Civil Procedure Code which says that in case of a dispute arises as to whether any person is or is not the legal representative, the said question shall be determined by the court. Continuing his submission, he submitted that the learned competent authority was duty bound to determine as to whether the applicant, Ram Chandra Prasad Shahi was Secretary of the Ayodhya Prasad Singh Trust or not because the status of Ram Chandra Prasad Shahi was seriously challenged by the petitioner and petitioner also challenged the very existence of Ayodhya Prasad Singh Trust. He submitted that admittedly, the learned competent authority did not make any enquiry to determine the aforesaid question. Learned counsel for the petitioner took attempt to fortify his contention by referring the decision of **Bihar State Hindu Religious Trusts Board vs. Mahanth Rama Kant Das and others and analogous cases reported in 2009(2) PLJR 980** wherein a co-ordinate Bench of this Court held that the provision of Order XXII Rule 5 of C.P.C. is mandatory in nature and if dispute arises in respect of legal

representative of a party to the suit, the court is duty bound to make enquiry and determine the aforesaid issue.

11. He also relied upon decision of **Md. Janudul Haque vs. Md. Zubair Haider and another reported in AIR 1981 Patna 345**. In the aforesaid case, one Mostt. Afshan Khatoon brought money suit no. 223 of 1976 for payment of her debt against two brothers of her husband. During pendency of the aforesaid money suit, the sole plaintiff died and one Md. Zubair Haider filed a petition for being substituted in place of sole plaintiff on the ground that the aforesaid Mostt. Afshan Khatoon had verbally disposed of her dower debt by will along with other property in his favour. In the aforesaid circumstance, a co-ordinate Bench of this Court held that court below was bound to record the finding in respect of the aforesaid will and without recording any finding on the will, the aforesaid Md. Zubair Haider could not have substituted. Learned counsel for the petitioner also cited decision of **Jaladi Suguna vs. Satya Sai Central Trust and others reported in 2008(4) PLJR (SC) 269** wherein it has been held by the Apex Court of this country that when there is a dispute on the question of legal representative, it should be determined by the court and only when question of legal representative is determined by the court and, as such, legal representative is

brought on record, then only, it can be said that the state of the deceased is represented.

12. Learned counsel appearing for the petitioner further submitted that admittedly, the learned competent authority failed to hold an enquiry in view of Order 22 Rule 5 of the C.P.C. and, therefore, the learned competent authority violated the mandatory provisions of C.P.C. and, therefore, the impugned order cannot sustain in the eye of law. To fortify the above stated contention, he referred decision of **Dr. M.N. Dasamma vs. State of Andhra Pradesh reported in AIR 1973 SC, 2275**. In the aforesaid case, the enquiry was conducted by the one Chairman of the Tribunal whereas report was submitted by another member of the Tribunal and in that circumstance, the Apex Court of this country held that the report submitted by another member was illegal and void.

13. On the strength of aforesaid submissions as well as decisions, learned counsel appearing for the petitioner prayed before this court that the matter be remitted to the Competent Authority, Patna with direction to hold enquiry as envisaged under Order 22 Rule 5 of the C.P.C. and then decide the matter afresh.

14. On the other hand, learned counsel appearing for the respondents refuted the above stated submissions arguing that

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admittedly, Ayodhya Prasad Singh Trust brought the Case No. 01 of 1987 through its the then Secretary, namely, Raj Nath Singh and the aforesaid case was admitted for hearing and furthermore, the parties fought up to the Apex Court of this country on several issues and the matter again came before the learned Competent Authority for a fresh hearing by the order of Hon'ble Apex Court. It is further contended on behalf of the respondents that admittedly, the then Secretary, namely, Raj Nath Singh died during pendency of the Case No. 01 of 1987 but the trust is a perpetual minor and right to sue was survived and when the present Secretary, namely, Ram Chandra Prasad Shahi was appointed Secretary of the above stated trust, he filed petition before the learned competent authority to substitute him in place of the then Secretary, namely, Raj Nath Singh with an intent to pursue the matter. It is further contended by him that Order 22 Rule 5 of the C.PC. is not applicable in the present case though the learned competent authority passed the impugned order after perusing the materials available on the record and perusal of documents by the learned competent authority is itself amount to enquiry and, therefore, there is no need to remit the matter to the learned competent authority for passing the order afresh.

15. Having heard the contentions of both the parties, I

have gone through the record as well as decisions cited on behalf of the petitioner. The main grievance of the petitioner is that the learned competent authority violated the provision of Order 22 Rule 5 of the C.P.C. and did not hold an enquiry to determine as to whether the applicant, Ram Chandra Prasad Shahi was legal representative of the Trust or not and furthermore, the learned competent authority relied upon the photostat copy of documents which were not admissible in the evidence.

16. Now, I would like to refer Order 22 Rule 5 of the Civil Procedure Code which runs as follows:-

> 5. Determination of question as to legal representative- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:
>
> [Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in

determining the question.]

17. From bare perusal of the aforesaid provision, it is abundantly clear that when dispute arises as to whether any person is or is not legal representative of a deceased-plaintiff or a deceased defendant, the court is duty bound to determine the aforesaid question before bringing the aforesaid person on record as legal representative of the deceased.

18. In the instant case, the petitioner has challenged that Ram Chandra Prasad Shahi, who claimed before the competent authority to be Secretary of Ayodhya Prasad Singh Trust, is not duly appointed Secretary of above stated trust and he is not competent to represent the aforesaid trust nor he is legal representative of the above stated trust. It is an admitted position that the competent authority did not make any enquiry as provided under Order 22 Rule 5 of the Civil Procedure Code, before passing the impugned order dated 19.05.2009 rather passed the impugned order on the basis of materials available on the record.

19. It has been argued on behalf of the respondents that perusal of documents available on the record amounts to an enquiry as prescribed under Order 22 Rule 5 of the Civil Procedure Code but in my view, mere perusal of documents available on the record is not amount to proper enquiry because in

enquiry both parties of the said enquiry have right to adduce their evidence but admittedly, in the present case, the competent authority did not give any opportunity to the parties to adduce evidence on the point of status of aforesaid Ram Chandra Prasad Shahi before passing impugned order dated 19.05.2009.

20. It would appear from perusal of the impugned order that the competent authority relied upon the photostat copy of resolutions of the Committee and did not take any pain to call for the original documents of resolutions of the aforesaid Committee, particularly, in the circumstance, when the petitioner vehemently pleaded before the competent authority that photostat copies of resolutions of the Committee were forged and fabricated documents and, therefore, in my view, the impugned order of competent authority cannot sustain in the eye of law.

21. It would further appear from perusal of the impugned order that the competent authority has completely ignored the provision of Order 22 Rule 5 of the Civil Procedure Code, particularly, in the circumstance, when the petitioner specifically pleaded before the competent authority that Ram Chandra Prasad Shahi was not duly appointed Secretary of the aforesaid trust and the concerned trust had already lost its existence in the year 1976 when the entire properties of concerned

trust were vested in the State.

22. It is an admitted position that purpose of substitution as provided in the law is only to represent the estate of deceased before the court of law in a litigation and mere substitution of a person is not amount to declaration of his right and title in respect of the disputed properties. The substituted person can only pursue and protect the interest of a deceased in a litigation before the court of law but before substituting to any person in place of a deceased in a litigation, the court is duty bound to see as to whether proper person has been substituted in place of deceased or not and no person, who has adverse interest against the deceased can be substituted in place of deceased and that is why Order 22 Rule 5 of C.P.C. casts a duty upon the court to determine as to whether any person is or is not the legal representative of a deceased, if a dispute arises in respect of the aforesaid fact.

23. It is apparent from the impugned order that the competent authority did not follow the provision as provided under Order 22 Rule 5 of the Civil Procedure Code and, therefore, in my view, the impugned order cannot sustain as the same is in utter violation of law and this Court under Article 226 of the Constitution of India has every right to interfere into the impugned

order.

24. Accordingly, on the basis of aforesaid discussions, this writ petition is allowed and the impugned order dated 19.05.2009 is, hereby, quashed and the matter is remitted to the competent authority with direction to pass afresh order in accordance with law after making proper enquiry as provided under Order 22 Rule 5 of the Civil Procedure Code.

(Hemant Kumar Srivastava, J)

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