

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10571 of 2015

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Rajeev Kumar Agrawal

.... Petitioner/s

Versus

Jitendra Narain Agrawal & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-11-2015

Heard learned senior counsel Mr. Dhruv Narayan for the plaintiff-petitioner, learned counsel Mr. Ranjan Kumar Dubey for respondent no.3 and learned counsel Mr. Samir Kumar for respondent no.1 on the Interlocutory Application No.6150 of 2015.

2. At the time of hearing of this interlocutory application the learned counsel appearing on behalf of both the parties submitted that the writ application may be heard in admission matter on merit. Accordingly, I heard them on merit also.

3. By the impugned order dated 11.05.2015 passed by Subordinate Judge-I, Begusarai in Title Suit No.173 of 2012/1347 of 2014 the court below rejected the application filed by the plaintiff-petitioner for deleting the name of defendant no.1 from the cause title of the plaint.

4. The learned senior counsel Mr. Dhruv Narayan for the petitioner submitted that the relief was claimed against only defendant no.1 as he was the trustee of the trust deed. He died. Therefore, application was filed for deleting his name. The court below wrongly rejected the said application.

5. On the other hand, the learned counsel appearing on behalf of respondent no.3 submitted that in fact the wife of the deceased and another lady Anita Narayan had also filed an application for being added/substituted in place of the deceased defendant no.1. The learned court below has not disposed of the said application and observed that if no substitution application is filed by the plaintiff then the said application shall be considered.

6. The learned counsel appearing on behalf of respondent no.1 vehemently opposed.

7. It appears that the plaintiff is the petitioner. Admittedly defendant no.1 has died. The plaintiff has filed the application for deleting his name. Therefore, the court below has wrongly rejected the said application instead of deleting the name of the defendant no.1. It is for the plaintiff to choose as to whether he should add any legal representative of the deceased defendant no.1 or not. If at all they are not necessary party that will be considered by the court below because of the fact that the said

alleged legal representatives of the deceased defendant no.1 have already filed application for being added/substituted in place of the deceased defendant no.1. The court below cannot dictate the plaintiff to move the case according to wish of the Court. It is for the plaintiff to decide. Now, therefore, since the plaintiff himself is praying for deleting the name of deceased defendant no.1, the court below should have allowed the said application deleting the name of defendant no.1 at the risk of the plaintiff and if in fact in future they are found to be necessary party in the suit on this ground alone, the plaintiff's suit can be dismissed.

8. In view of the above facts and circumstances this writ application is allowed and the impugned order aforesaid is set aside. The court below is directed to proceed according to law.

(Mungeshwar Sahoo, J)

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