

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1319 of 2008

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1. Md. Izhar.
 2. Md. Awanul Haque.
 3. Ajanul Haque.
 4. Md. Sabanul Haque, all are sons of Abdul Hafiz and Bibi Sabha, all by caste Muslim residents of village-Daharpur, P.S. Lodipur, District-Bhagalpur.

.... Petitioner/s

Versus

- 1 Md. Daud.
- 2 Md. Isha.
- 3 Md. Salah.
- 4 Md. Tahir, all sons of late Zainul Abedin, resident of village-Pithna, P.S. Lodipur, District-Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Pandey, Adv.
For the Respondent/s : Mr. S.S. Dwivedi, Sr. Adv.
Mr. Satish Chandra Mishra, Adv.
Mr. M. N. Hoda, Adv.
Mr. Shakil Ahmad Khan, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-03-2016

Heard.

It appears that on 29.01.2016, the prayer was made on behalf of the petitioners to convert this revision application into an a misc. appeal in view of the provision under Order 43 Rule 1 (k) C.P.C. but the matter was however adjourned on the prayer on behalf of the petitioners to examine the legal aspects. It further appears that the matter was again adjourned on 19.02.2016 on the prayer made on

behalf of both the parties.

This revision application has been filed against the order dated 07.04.2008 passed in T.A. No. 224 of 2006 whereby and whereunder the learned appellate court below has rejected the prayer for substitution as made on behalf of the appellant-petitioners in their petition dated 03.02.2007 and 11.09.2007 and has held that the appeal has abated as against the heirs of the deceased respondents and accordingly, dismissed the same.

Mr. S.S. Dwivedi, the learned senior counsel for the opposite parties has raised two objections with regard to the maintainability of the present revision application. It has been firstly submitted that all the respondents before the appellate court below have not been impleaded as parties in this revision application and in particular the heirs of the deceased respondents in the appellate court below for whose substitution the prayer was made and rejected, have not been made parties in this revision application leading to a situation where the impugned order has attained finality as against the respondents who have not been impleaded as parties as well as the heirs of the deceased respondents who have also not been made parties. In backdrop of these facts, the learned senior counsel has submitted that the proceeding further with this revision application will certainly lead to the chances of conflicting orders. It has been

next submitted that under the provision of Order 43 Rule 1 (k) C.P.C., the impugned order is an appealable order and therefore also the present revision application is not maintainable. It has, however, been further pointed out that even the prayer as made on behalf of the petitioners for converting this revision application into a miscellaneous appeal can also not be granted in the fact situation where this revision application filed in the year 2008 is itself not maintainable for want of necessary parties.

From the records, it appears that the present petitioners as plaintiffs filed the suit for partition with regard to the properties mentioned in the schedule of the plaint. After the dismissal of the suit, the Title Appeal No. 224 of 2006 was preferred by the present petitioners. From the perusal of the petitions for substitution (Annexure-1 and Annexure-2), it appears that the said two petitions have been filed by the plaintiff-appellant-petitioners before the appellate court below praying for substitution of the heirs and legal representatives of the deceased respondent no. 1 (as in the petition dated 03.02.2007) and for substitution of the heirs and legal representatives of the deceased respondent nos. 8, 12, 15, 16 and 19 (as in the petition dated 11.09.2007). From the perusal of these two petitions it is glaring that there were more respondents in the appeal whereas in the present revision application only four respondents have

been impleaded as opposite parties describing them as defendant-respondents. This become important as the matter arises out of a partition suit. It is thus beyond any cavil that all the respondents of the appeal in the learned court below have not been impleaded as opposite parties in this revision application. Further the heirs and legal representatives of the deceased respondent no. 1 as mentioned in the petition dated 03.02.2007 and also the heirs and legal representatives of the deceased respondent nos. 8, 12, 15, 16 and 19 as mentioned in the petition dated 11.09.2007 have also not been impleaded as parties in this revision application. The conclusion is, therefore, inevitable that the necessary parties to the present revision application have been omitted and this revision application cannot proceed in absence of those parties on record because the proceeding further with this revision application may result in inconsistent and conflicting orders. This Court finds substance in the submission on behalf of the opposite parties that the present revision application is therefore not maintainable and no order except the dismissal of the same as not maintainable can be legally passed. This Court also finds reasons to align with the submission of the learned senior counsel for the opposite parties that even the order for converting this revision application into a miscellaneous appeal, as has been prayed on behalf of the petitioners, also cannot be granted in view of the non-

maintainability of the present revision application for want of the necessary parties on record. The fact also cannot be ignored that this revision application has been filed in the year 2008 and since thereafter no step has been taken by the petitioners for impleading the necessary parties to the revision application and after expiry of the period of limitation the impugned order has attained finality as against them.

In result, this Court comes to the conclusion that this revision application is not maintainable and is, accordingly, dismissed, as such.

(V. Nath, J)

Devendra/-

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