

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.492 of 2016**

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Yoginder Tiwary & Ors

.... Appellant/s

Versus

Dinesh Tiwary & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Pandey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 02-09-2016

Heard learned counsel, Mr. Vishwajit Kumar,
appearing for the petitioners.

2. Perused the order dated 22.09.2015 passed by the
Additional District Judge- VI, Gopalganj in T.A. No. 70 of 1989,
whereby the court below allowed the Order 1 Rule 10 C.P.C.
application filed by respondent Nos. 2 to 4 herein.

3. It appears that the suit filed by the present plaintiffs
being T.S. No.249 of 1983 for declaring the two sale deeds as
invalid was dismissed. Against the said dismissal, judgment and
decree, the plaintiffs-petitioners filed T.A. No. 70 of 1989. During
the pendency of the appeal, defendant No.2, Vishwanath Tiwary,
died. The application was filed for deleting his name on the ground
that he died living behind any legal representatives and that he had
already entered into compromise. Compromise application was
filed but it is still pending and it has not been accepted. Thereafter

application under Order 1 Rule 10 C.P.C. has been filed by the son and daughters of Vishwanath Tiwary for being added as party in the appeal. By the impugned order, the court below has allowed this application.

4. Since respondent Nos. 2,3 and 4 are claiming to be the son and daughter of Vishwanath Tiwary, which is not being denied by defendant No.1 i.e. brother of Vishwanath Tiwary. In my opinion, the learned court below has rightly allowed the application under Order 1 Rule 10 C.P.C. Therefore, the court below has rightly exercised the jurisdiction vested in it by law. As such, there is no jurisdictional error in the impugned order. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)