

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4644 of 2014

=====

Birendra Thakur & Ors

.... Petitioner/s

Versus

Harendra Singh & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 04-02-2016 Heard the learned counsel for the petitioners and learned
counsel for the respondents.

This application has been filed by the plaintiffs-
petitioners for setting aside the order dated 18.12.2013 passed by
Sub Judge IV, Saharsa in Title Suit No.113 of 1997.

It appears that the plaintiffs filed the suit against the
defendants. On the death of defendant Nos.7 and 9, the application
was filed for deleting their names on the ground that the heirs of
defendant No.9 are already on record. Application was filed for
deleting the name of defendant No.9 on 18.01.2013 which was
rejected by the Court below. Again another application was filed
on 04.07.2013 praying for deleting the name. Subsequently, when
he came to know the death of defendant No.9, the plaintiff filed
application on 23.10.2013 for substituting the legal representatives
of both the deceased defendant Nos.7 and 9. On 18.12.2013, the

Court below has rejected the said application.

At the time of hearing of this application, the learned counsel for the respondents submitted that in fact, the legal representatives of the deceased defendant No.7 have already been substituted.

It is admitted fact that one of the sons of defendant No.9 is already on record as defendant No.8.

In view of the above facts that the legal representatives of deceased defendant No.7 have already been substituted, as submitted by the learned counsel for the respondents, so far that part of the order is concerned, it is not necessary to examine the legality or otherwise.

So far deletion of name of defendant No.9 is concerned, admittedly, his son is already on record as defendant No.8. Therefore, now the estate of the deceased defendant No.9 is being sufficiently represented by defendant No.8 and the plaintiff is not desirous of substituting the other legal representatives.

In such circumstances, the Court below should have deleted the name of deceased defendant No.9. Thus, that part of the order whereby the Court below rejected the application filed by the plaintiff for deleting the name of the defendant No.9 is set aside and the application filed by the plaintiff is allowed and the

name of defendant No.9 is deleted from the cause title of the
plaint.

Thus, this writ application is allowed in part.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--