

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11517 of 2013

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1. Shila Nath Singh son of Late Parmanand Singh,
 2. Sharangdhar Singh son of Late Parmanand Singh, both residents of Village-Mokhtarpur, P.O. Mahnar, P.S. Mahnar, Distt-Vaishali.

.... Petitioner/s

Versus

1. Dr. Anil Kumar Singh son of Late Sri Man Narayan Singh,
2. Shokh Haran Singh son of Late Sri Man Narayan Singh, both residents of Village-Mokhtarpur, P.O. Mahnar, P.S. Mahnar, Distt-Vaishali.
3. Kurunandan Singh son of Late Bhagwat Narayan Singh, resident of Village-Mokhtarpur, P.O. Mahnar, P.S. Mahnar, Distt-Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Ved Prakash Srivastava, Advocate

For Respondents No. 1 and 2 : Mr. K.B. Nath, Advocate
Mr. Satyapaul Sen, Advocate

For Respondent No. 3 : Mr. J.P. Sah, Advocate
Mr. Abhay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

4 16-05-2016 Petitioners have assailed order dated 20.03.2013 passed by Sub Judge, 8th Vaishali at Hajipur in Title Suit No. 626/2010 whereby and whereunder substitution has been allowed relating to death of one of the plaintiffs namely, Bhupendra Singh on account of his death.

2. Bereft of unnecessary details, deceased, Bhupendra Singh along with these two petitioners filed Title Suit No. 626/2010 asking for a relief that sale-deed dated 16.10.2001 allegedly executed by Bhupendra Singh in favour of defendants relating to Schedule-1 property be declared forged and fabricated, without any consideration, not executed by the plaintiff No.1, Bhupendra Singh, cost of suit, any other relief or reliefs which the

plaintiff is found entitled for and for that necessary recitals have been enumerated in the plaint.

3. Respondents/defendants appeared, filed their WS wherein they have reiterated the genuineness of the document which was executed for valid consideration followed with delivery of possession. Furthermore, in para-17 of the WS, it has been incorporated that Bhupendra Singh negotiated with the defendants for transfer of the land and the aforesaid negotiation was held in presence of the plaintiff, Bhupendra Singh as well as Kurunandan Singh and his son, Sushil Babu Advocate, apart from raising other grounds challenging the plea of the plaintiffs as well as relief so sought for.

4. While the suit was sailing, plaintiff no.1 died on 28.10.2012 and on account thereof, petition was filed on behalf of remaining plaintiffs/petitioners to expunge his name on 04.12.2012 whereupon a rejoinder was filed on behalf of defendant/respondent on 05.02.2013 disclosing therein that Bhagwat Narain Singh, common ancestor died leaving behind his wife and three sons, namely, Yogendra Singh, Bhupendra Singh, plaintiff (since deceased) and Kurunandan Singh. Wife of Bhagwat Narain Singh died in 1968 and in likewise manner, Yogendra Singh also died. As Bhupendra Singh, plaintiff died issueless on account thereof, Kurunandan Singh, his brother is preferable Class-II heir who should be substituted whereupon the

learned lower court had heard and passed the order impugned.

5. It has been submitted that on behalf of petitioners that the order impugned is bad, illegal and fit to be set aside. In the background of the fact that from para-17 of the WS, it is evident that defendant/respondents have categorically pleaded that negotiation was materialized amongst Bhupendra Singh, plaintiff (since deceased) with the defendant/respondents in presence of Kurunandan Singh and his son and on account thereof, his status is found exposed being in conflict with the status of petitioners/plaintiffs and that being so, even if allowed, would have been under the status of defendant and not co-plaintiff as, having conflict interest would ultimately cost the interest of the petitioners/plaintiff. So submitted that the order impugned is fit to be set aside. To substantiate such plea, learned counsel for the petitioner also relied upon ***AIR 1939 Patna 225*** and ***AIR 1981 Patna 298***.

6. On the other end, learned counsel for the respondents has submitted that the order impugned happens to be in accordance with law and is fit to be confirmed. Furthermore, it has been submitted that there is no dispute of status of Bhupendra Singh, plaintiff (since deceased) who died issueless. Therefore, he is to be substituted by nearest Class-II heir and for that, Kurunandan Singh, his brother has rightly been substituted. Whatsoever been averred in the WS is not at all relevant for the

purpose of substitution as, both two have got different identity as well as mode of appreciation. Apart from this, WS is not the pleading of Kurunandan Singh rather once substituted, as has been substituted, it is the plaintiff which, on account of substitution, he has to carry on with other kinds of privilege which he is bound to enjoy coming under status of plaintiff. Therefore, assertion of the petitioners that on account of disclosure having been made under para-17 of the WS, there arose conflict of interest whereupon Kurunandan Singh is not legally entertainable as co-plaintiff on being substituted and so, the instant petition lacks merit.

7. There is no controversy with regard to status of petitioners who along with Bhupendra Singh (since deceased) happen to be plaintiffs of Title Suit No. 626/2010. There is no controversy regarding death of Bhupendra Singh on 28.10.2012 and on account thereof, a petition was filed on 04.12.2012 (Annexure-1) at the end of petitioners to expunge the name of Bhupendra Singh on that very score. It is evident from Annexure-2, rejoinder filed by the respondents over petition dated 04.12.2012 (Annexure-1), dated 05.02.2013 that the same was filed controverting the plea of the plaintiff and further prayed for rejection of petition dated 04.12.2012. That means to say, Annexure-2 is mere a rejoinder and not the prayer made for substitution. It is true that in terms of Order XXII of the C.P.C. no obligation has been cast specifically on plaintiff or defendant

asking for substitution on account of death but, there should be a petition on that very pretext. Apart from this, as the date of death of Bhupendra Singh as 28.10.2012 is uncontroverted, then in that event, after expiry of 90 days, the question of limitation followed with abatement in terms of Articles 120, 121 of the Limitation Act is found duly exposed and so the substitution would have been allowed only after having the aforesaid event recalled on a prayer so made on that score as it is not a self oriented event. From the order impugned, it is evident that the learned lower court had not considered the aforesaid eventualities while passing the order impugned.

8. Accordingly, the order impugned is set aside. Petition is allowed.

9. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court
May 16th 2016
Perwez/AFR

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