

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12051 of 2014

=====

Samsuddin Shah son of Amirullah Shah Resident of village - Dwar Devi Chowk, Bettiah, P.O. and P.S. Bettiah (T), District - West Champaran

.... Petitioner/s

Versus

1. Tanwirul Absar son of Syed Badruddin Haidar
2. Bibi Gazala Fasidi also Known as Bibi Jamal Ara @ Rafat wife of Tanwirul Absar Both are resident of Mohalla - Kalibag, Jodda Innar, Chowk Bettiah, P.O. + P.s. Bettiah (T), District - West Champaran
3. Jahid Hussain son of Late Abdul Mutlib
4. Najrun Nessa
5. Taiyaba Khatoon
6. Mohrun Nessa
7. Misrun Nesa All are daughter of Late Abdul Mutlib and all are resident of Mohalla - Dwar Devi Chauk, Bettiah, P.O. + P.S. Bettiah (T), District - West Champaran

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-08-2016

Re. Interlocutory Application No. 9243 of 2015

This interlocutory application has been filed praying for substitution of the sole petitioner who died on 7.9.2015 leaving behind his heirs and legal representatives. In Paragraph 3 at page 2 of the said petition, a prayer has been made to substitute the heirs and legal representatives in place of the petitioner.

Considering the submissions and averments made in the said Interlocutory Application, the prayer for substitution is allowed and the heirs and legal representatives as mentioned in paragraph 3 of

the Interlocutory application, be substituted in place of the deceased petitioner after expunging his name from the application.

Learned counsel for the petitioner has submitted that he has filed Vakalatnama on behalf of the sole heir and legal representative of the deceased, petitioner.

Re. C.W.J.C No. 12051 of 2014

Heard learned counsel appearing on behalf of the petitioner on merits.

The application has been filed questioning the legal sustainability of the impugned order dated 5.4.2014 by which the learned 1st Additional Munsif, Bettiah in T.S. No. 268 of 1998 has allowed petition of the plaintiff-respondent for substitution of heirs and legal representatives of the deceased defendant no. 2.

From the averments made in the application as well as from the impugned order, it transpires that the suit has been filed by the plaintiff challenging the sale deed dated 12.08.1974 executed in favour of the defendant 1st set (petitioner). According to the case of the plaintiff, the Defendant no. 2 of the suit namely, Abdul Motliab was the vendor from whom the plaintiff had purchased the suit land by sale deed dated 02.02.1993. The said defendant no 2 died and the prayer of the plaintiff - respondents for substituting his heirs and legal representatives has been allowed by the learned Court below by the impugned order.

After considering the submissions and the materials on record, it is evident that the defendant no. 2 was only a Performa defendant in the suit and his death and none substitution thereafter, would not have affected the suit resulting in its abatement. Also the learned court below, after considering the facts and circumstances, has allowed the prayer of the plaintiff-respondent for substituting the heirs of the deceased defendant no. 2 and the petitioner cannot be said to have been prejudiced in any manner. This Court therefore, declines to invoke jurisdiction under Article 227 of the Constitution of India.

The application is accordingly, dismissed.

(V. Nath, J)

Prakash/-

U			
---	--	--	--