

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11035 of 2011

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1. Uday Chaudhary S/O Late Govind Choudhary R/O Vill.- Khatauna Jai Ram, P.S.- Kudhani, Distt.- Muzaffarpur

.... Petitioner/s

Versus

1. Sri Ram Binod Choudhary S/O Late Govind Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
2. Sri Subodh Choudhary S/O Late Govind Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
3. Bijay Choudhary S/O Late Govind Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
4. Ambika Chaudhary S/O Sheo Blak Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
5. Mundrika Choudhary S/O Sheo Blak Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
6. Najendra Choudhary S/O Sheo Blak Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
7. Madan Mohan Choudhary S/O Ambika Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
8. Arun Kumar Choudhary S/O Late Chandrika Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur
9. Anita Devi D/O Late Chandrika Choudhary R/O Vill.- Kharauna Jairam, P.S.- Kurhani, Distt.- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiva Shankar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 02-03-2016 Supplementary affidavit filed on behalf of petitioner has been kept on record.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

3. Petitioner is aggrieved by order dated 31.05.2011 passed by 5th Additional District Judge, Muzaffarpur in Title Appeal No. 41/1982 whereby and whereunder prayer of the

petitioner to substitute him in place of appellant no.6, Sumitra Devi, on account of her death, has been rejected.

4. It has been submitted on behalf of the petitioner that Sumitra Devi as well as three brothers of petitioner were on the record since before and further, on account of ulterior motive possesses by full brothers of petitioner, appellant no.3 to 5, after death of Sumitra Devi, appellant no.6 had prayed for deletion of name of appellant no.6, Sumitra Devi divulging the fact that Sumitra Devi had died leaving behind only three sons, therefore, only deletion was allowed. It has also been submitted that petitioner happens to be an illiterate fellow, on account thereof, had got no knowledge with regard to present proceeding and that happens to be the reason behind that at an earlier occasion he had not made prayer for his presence in the aforesaid proceeding. After death of his mother, appellant no.6, he came to know about the pendency of instant title appeal whereupon, he rushed, got the record inquired, came across the news and the fraud played by his own brothers and subsequently thereof, filed a petition for substitution relating to appellant no.6 including he himself, apart from his three brothers present since before as well as sisters but the learned appellate court rejected the prayer by the order impugned, hence this petition.



5. It has also been submitted that substitution is to be carried out on account of death of appellant no.6 and when there happens to be presence of petitioner as a lineal descendant of appellant no.6, Sumitra Devi, then in that event, his presence is found necessary whereupon, his presence should have been duly acknowledged by allowing the prayer.

6. Per contra, it has been submitted on behalf of respondent 1st party as well as 2nd party that though the petitioner happens to be son of appellant no.6, Sumitra Devi but during his childhood, he was adopted by his uncle and on account thereof, he ceases to be member of his family constituted by Govind Chaudhary. That being so, unless and until, there happens to be conclusive finding relating to the petitioner to the effect that, he still remains to be lineal descendant of appellant no.6, Sumitra Devi, prayer of petitioner would not be entertainable.

7. Heard both the parties and after going through the order impugned, it is evident that the Title Suit was brought up in the year 1967 by the Respondent, 2nd Set whereunder, though the brothers of petitioner even being minors, were shown to as defendant under the guardianship of his father, Govind Chaudhary, presence of petitioner was nowhere acknowledged. In likewise manner, during course of filing of WS, Govind



Chaudhary had not pleaded that suit happens to be a defective one, on account of non joinder of necessary party, that means to say, on account of non pleading of the petitioner. There happens to be no document to suggest that petitioner continued with his family, more particularly, in the background of the fact that though his presence has been acknowledged, but subject to disclosure at the end of respondents 1st party, that petitioner was adopted by his uncle.

8. In the aforesaid background, a disputed question has arisen that whether the petitioner could be recognized as a legal heir of appellant no.6, Sumitra Devi or not. Whenever such question arises, in terms of Order XXII Rule-5 of the CPC, it is evident that the Court has got ample power to determine the question of legal representative.

9. At the present moment, a deficiency at the score of petitioner is found. Even considering his plea that his presence was already there in the year 1967 as a minor, it was expected at his end to interfere with the proceeding within three years after attaining of the majority and having failed to do so, his individual status is found completely blurred. However, his status as legal heir of appellant no.6, speaks different situation whereupon, the learned lower court should have exercised in terms of Order XXII

Rule 5 of the C.P.C, on account of having been disputed.

10. That being so, the order impugned is set aside.
Petition is allowed.

11. The matter is remitting back to the learned lower court to proceed afresh in light of observation as indicated above.

(Aditya Kumar Trivedi, J)

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