

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10332 of 2014

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Abhay Shankar Raju @ Abhay Shankar Choudhary son of Late Laxman Choudhary
Resident of village - Chakra, Nirmali, Ward No. 6, P.O. + P.S. + District - Supaul

.... Petitioner/s

Versus

1. Most. Domini Devi @ Baba Dai w/o Late Badri Mukhiya resident of Supaul ward No.3, Sohri Sakunat Mauze Basbitta, P.S. + District – Supaul.
 2. Vijay Shankar Choudhary son of Late Laxman Choudhary.
 3. Raj Kishore Choudhary son of Late Laxman Choudhary Both are resident of Supaul Ward No. 11, P.S. + District – Supaul.
 4. Badri Agarwal son of Hiralal Agarwal.
 5. Purusottam Agarwal son of Hiralal Agarwal Both are resident of Supaul ward no.2, P.S. + District – Supaul.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakshmi Kant Tiwary, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-06-2016

Heard Mr. Tiwary, learned counsel for the petitioner.

The grievance of the petitioner is that the order dated 04.05.2012 for substitution of the heirs and legal representatives of the deceased Laxman Choudhary has been erroneously made ignoring the claim of this petitioner who also happens to be the one of the heirs of the said deceased.

Learned counsel for the petitioner has submitted that the suit was earlier dismissed in default and thereafter the plaintiff filed a petition for restoration of the suit under Order 9 Rule 9 C.P.C. The miscellaneous case thereafter was initiated. During the pendency of



that miscellaneous case the defendant Laxman Choudhary died. It has also been pointed out by the learned counsel that the plaintiff did not implead all the heirs of the said deceased defendant though his one son Vijay Choudhary had appeared and submitted that the defendant no. 1 had got one more son and daughter as well. It has also been categorically submitted by the learned counsel for the petitioner that this petitioner had tried to file the petition before the court after revival of the suit and at the stage when the plaintiff's petition for substitution of the deceased defendant in the suit was being considered but the learned court below has illegally refused to accept the said petition of the petitioner. Learned counsel, therefore, has propounded that the learned court below has acted with material irregularity and has also committed error of jurisdiction in discarding the claim of this petitioner who is also one of the heirs of the deceased Laxman Choudhary.

After considering the submissions and from the perusal of the impugned order, it is manifest that the defendant Laxman Choudhary who died during the pendency of the miscellaneous proceeding for execution of the suit was substituted by his heirs. Thereafter, when the suit was restored, a petition was filed by the plaintiff for bringing the heirs of the deceased defendant Laxman Choudhary on record. The said petition has been allowed by the impugned order. The assertion of the petitioner that he is also one of

the heirs of the deceased defendant Laxman Choudhary but has been left out from being substituted as his heirs and his petition in this regard was not acceptable by the learned court below is not substantiated by the material on record. In the impugned order also, there is no such mention of any petition filed by the petitioner. Moreover, this application under Article 227 of the Constitution of India has been filed only by the petitioner and significantly his brothers who have been substituted have not joined the petitioner in assailing the said order. Further, this Court also does not find any such petition, which is said to have been tried to be filed by the petitioner in the court below, annexed with the present application nor any such date has been mentioned on which the petitioner proposed to file the petition which was not accepted by the learned court below. In the background of these facts, this Court does not find it a fit case for interdicting the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

The present application is, accordingly, dismissed.

However, the liberty is granted to the petitioner to avail the remedy, if available, in accordance with law for redressal of his grievances.

Devendra/-

(V. Nath, J.)

AFR/NAFR	
CAV DATE	
Uploading Date	25.07.2016
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