

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1204 of 2013

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1. Arbind Kumar Jha @ Mohan Kumar Jha S/O Late Kali Kumar Jha.
2. Saraswati Devi W/O Late Kali Jha both R/O Mohalla-Azam Nagar,
P.S.-Lalit Narayan Mithila University, Distt-Darbhanga.

.... Petitioner/s

Versus

1. Nawal Kishore Prasad Srivastava S/O Late Shyam Nandan Prasad R/O
Mohalla-Azam Nagar(Durga Mandir), P.S.-Lalit Narayan Mithila
University, Distt-Darbhanga.
2. Kumod Rashmi Kumari.
3. Sarita Kumari@Sumod Kumari both Daughters of Late Niranjan Prasad
R/O Mohalla-Azam Nagar, P.S.-Lalit Narayan Mithila University, Distt-
Darbhanga.
4. Rishikesh Kumar Jha@Bablu Jha S/O Late Kali Kumar Jha R/O
Mohalla-Azam Nagar, P.S.-Lalit Narayan Mithila University, Distt-
Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kumar Thakur
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 08-01-2016 Heard Mr. Baidyanath Thakur, the learned counsel
for the petitioners and Mr. Durga Nand Jha, the learned counsel
for the respondents.

Questioning the legal sustainability of the impugned
order allowing the prayer of the respondent no. 1 to be substituted
along with the respondent no. 2 and respondent no. 3 as heirs and
legal representatives of the deceased sole plaintiff in the suit, the
present application under Article 227 of the Constitution of India

has been filed by the defendants of the suit.

The necessitous facts are that the title suit was filed for decree of possession over the suit land against the defendants by the sole plaintiff Niranjana Prasad Srivastava. During the pendency of the suit, the sole plaintiff Niranjana Prasad Srivastava died on 16.01.2012. The petition was filed under Order 22 Rule 3 C.P.C. on 27.02.2012 praying for substitution of the heirs and legal representatives of the deceased sole plaintiff Niranjana Prasad and in the said petition, the respondent nos. 1 to 3 were named as heirs and legal representatives to be substituted. The defendants filed rejoinder to the said petition praying to reject the said petition and dismiss the suit as abated, inter alia, also on the ground that the respondent no. 1 Nawal Kishore Prasad Srivastava was not the son of the deceased sole plaintiff Niranjana Prasad. Subsequently, a petition dated 30.04.2012 was also filed on behalf of the defendants contesting the date of death of the deceased sole plaintiff as mentioned in the petition dated 27.02.2012 and asserting that the real date of death was 09.10.2011 and on that basis praying that the said petition for substitution was not filed within the prescribed period of limitation. The learned court below heard the parties in the substitution matter and abatement matter, scrutinized the evidence led by the parties and by the impugned

order has allowed the prayer for substitution of the present respondents in place of the deceased sole plaintiff.

The learned counsel for the petitioners, at the out set, has submitted that the relief in the present application against the impugned order is confined to the extent whereby the prayer of the respondent no. 1 Nawal Kishore Prasad Srivastava for substitution has been allowed along with the respondent nos. 2 and 3 in place of the deceased sole plaintiff. It has been clarified that the petitioners are not contesting the finding with regard to the date of death of the deceased sole plaintiff or the substitution of the respondent nos. 2 and 3 as heirs of the deceased sole plaintiff. The learned counsel for the petitioners has submitted that the learned court below was required to proceed under the provision of Order 22 Rule 5 C.P.C. once after there was dispute with regard to the status of the respondent no. 1 as son or heir of the deceased sole plaintiff Niranjana Prasad. Elaborating his submission, it has been canvassed that the learned court below should have held a full fledged inquiry into this question allowing the parties to lead oral and documentary evidence both. It has been posited that the learned court below has wrongly decided the issue of heirship only on the basis of the documentary evidence and has not assigned the reasonings for accepting the respondent no. 1 to be



the adopted son and heir of the deceased sole plaintiff Niranjan Prasad. The learned counsel has placed reliance on the decision in the case of **Ajambi Vs. Roshanbi, (2010) 11 SCC 168** and has further pointed out that in this decision the principles of law as laid down in the case of **Kanhiya Singh Santok Singh Vs. Kartar Singh, (2009) 5 SCC 155** has been approvingly followed.

The learned counsel for the respondents, in turn, has submitted that the learned court below has elaborately considered and evaluated the evidence adduced by the parties before coming to the conclusion that the respondent no. 1 was entitled to be substituted in place of the deceased sole plaintiff along with his two more heirs (respondent no. 2 and 3). It has been emphasized by the learned counsel that several documentary evidence have been adduced on behalf of the respondents including the documents containing the admission by the defendants themselves regarding the status of the respondent no. 1 as son of the deceased sole plaintiff Niranjan Prasad and the learned court below has not committed any illegality in relying upon those documentary evidence also for upholding the claim of the respondent no. 1. The learned counsel has also placed the averments made in the counter affidavit filed in the present writ application and has drawn the attention of the court to the documentary evidence adduced on



behalf of the respondents in the court below. It has also been posited that the defendants has never prayed before the court for opportunity to lead oral evidence also and as such they cannot now assail the impugned order on the ground that no oral evidence was led and considered by the court below. The learned counsel has also propounded that adjudication under the provision of Order 22 Rule 5 is only summary in nature and would not operate as res judicata between the parties on the issue of heirship.

After careful consideration of the facts as well as materials on record and also the submissions on behalf of the parties, it is manifest that after the death of the sole plaintiff in the suit, the petition for substitution was filed praying to substitute in his place, his son (respondent no. 1) and his two daughters (respondent nos. 2 and 3). The defendants contested the prayer for substitution inter alia also on the ground that one of the proposed heirs (respondent no. 1) was not the son and heir of the deceased sole plaintiff. The parties led their evidence on this issue and by the impugned order, the learned court below has allowed the prayer for substitution of the proposed three heirs as mentioned in the petition dated 27.02.2012 (Annexure-1) after hearing the parties and considering the evidence brought on record. In the present application, however, the defendants-petitioners have



assailed only the part of the impugned order whereby the substitution of the respondent no. 1 Nawal Kishore Prasad Srivastava has been allowed. It is the case of the defendant-petitioners that the respondent no. 1 was not the adopted son of the deceased sole plaintiff and, therefore, his prayer for substitution should not have been allowed.

The ambit and scope of the provision as contained in Order 22 Rule 5 C.P.C. are self explicit whereby the court has been enjoined to determine the question with regard to the status of any person as legal representative of the deceased party in the suit in case of dispute. The provision does not speak that in case of such a dispute the court is required to proceed separately for determining the question and the submission in this regard by the learned counsel for the petitioners is clearly misconceived. The learned court below has committed no error of jurisdiction in proceeding to determine the question of status of the respondent no. 1 as heir of the deceased sole plaintiff after considering the submissions and the evidence led on behalf of the parties.

It is also manifest that the defendants raised objection to the prayer of the respondent no. 1 for his substitution in place of the deceased sole plaintiff and have led their evidence in support of their assertion that the respondent no. 1 was not the son of the



deceased sole plaintiff as claimed and have filed a number of documentary evidence in this regard. It does not appear from the records that the defendant-petitioners ever made any prayer before the learned court below seeking permission to lead oral evidence as well. The submission on behalf of the petitioners that the learned court below ought to have directed them to lead evidence as well and has committed error of jurisdiction in not so asking the defendants to lead oral evidence is clearly misconceived. The court has no business to direct a party to lead a particular type of evidence for substantiating his case and the issue of error of jurisdiction can arise only when such prayer to lead a particular type of evidence is made and refused by the court. It is not such a case at present. In the case of **Ajambi** (supra) also, it has only been held that such a question cannot be decided without permitting the parties to lead evidence in respect of their respective cases and it has nowhere been laid down in this decision as to what type of evidence the parties would lead.

From the perusal of the impugned order, it is apparent that the learned court below has meticulously considered the documentary evidence led by both the parties on the question of status of the respondent no. 1 as heir of the deceased sole plaintiff. This documentary evidence include the documents of the



defendant-petitioners also by way of First Information Report, 144 Cr.P.C. proceeding etc. wherein the defendant-petitioner no. 1 has mentioned the fact of the respondent no. 1 to be the son of the deceased sole plaintiff. In the counter affidavit filed on behalf of the respondents also the documentary evidence adduced before the learned court below have been annexed, and perusal of the same discloses that the defendant-petitioners have accepted the respondent no. 1 to be the son of the deceased sole plaintiff by describing him as such before several authorities including the court proceeding also. Such evidence definitely have their probative value. During the course of the argument, the learned counsel for the petitioners has not denied the fact that in those documents the defendant-petitioners have mentioned the respondent no. 1 as son of the deceased sole plaintiff Niranjana Prasad but has submitted that the said statement by the defendant-petitioners would not change the real fact that the respondent no. 1 is not the son of the deceased sole plaintiff Niranjana Prasad. This Court is not impressed with this submission as the learned court below has also taken into notice that the respondent no. 1 has not claimed himself to be the natural son of the deceased sole plaintiff but has claimed to be the adopted son. But in any view of the matter, the findings recorded by the learned court below is based

upon the scrutiny of evidence on record and this Court has not been persuaded to find unreasonableness or perversity in the same in any manner and is also not inclined while exercising supervisory jurisdiction to align with the submission on behalf of the petitioners, which has mainly centered around re-appreciation of evidence for the purpose of taking another view. As held by this Court in the case of **Braj Kishore Singh Vs. Sri Raja Ram Prasad Yadav, 2002 (4) P.L.J.R 313** that the object of substitution of heir after the death of a party in the suit after determination under Order 22 Rule 5 C.P.C. is only for the purpose of bringing the legal representatives for continuing and conducting the legal proceeding before the court. Such a matter is evidently collateral to the suit and any determination thereof would not be res judicata on the issue of heirship. Moreover, in the present case as the substitution of the two admitted daughters of the deceased sole plaintiff has not been challenged by the defendant-petitioners, there is also no question of abatement of the suit.

In view of the aforesaid reasons and discussions, this Court does not find any merit in this writ application, which is, accordingly, dismissed.

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(V. Nath, J.)