

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20042 of 2011

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1. Faiz Murtaza Ali Son Of Late (Justice) Murtaza Fazal Ali Resident Of 112, Uday Park, New Delhi-110049 Through Anwer Najmi, Son Of Late Akhter Syeed Mojibi, R/O Mohalla Quddus Vakil Compound, Dariyapur, P.S. Pirbahore, Town And District Patna, The Duly Appointed Power Of Attorney On Behalf Of Faiz Murtaza Ali.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Advocate General, Bihar, Patna.
2. The District Magistrate, Patna Having His Office At Collectorate, Campus, P.S. Pirbahore, P.O. Bankipur, Patna-800004.
3. Syed Askari Hadi Ali Augustine Imam @ Tooto Imam Son Of Late Syed Hassan Imam R/O Kehilan, Village-Kisura, P.S. Hazaribagh, Mufassil, District Hazaribagh.
4. Syed Hassan Francis Imam Son Of Syed Askari Hadi Ali Augustine Imam @ Tootoo Imam Resident Of Kehilan, Village-Kisura, P.S.-Hazaribagh, Mufassil, District-Hazaribagh.
5. Miss Nattie Sahbat Imam Daughter Of Syed Askari Hadi Ali Augustine Imam @ Tootoo Imam Resident Of Kehilan, Village-Kisura, P.S.-Hazaribagh, Mufassil, District-Hazaribagh.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamal Nayan Choubey, Sr. Advocate
Mr. Sanjay Kumar Ojha -Advocate
For Respondents No. 3 to 5: Mr. Shashi Shekhar Dwivedi, Sr. Adv
Mr. Avinash Kumar –Advocate
For State : Mr. Pramod Kumar Sinha AAG-2

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

14 01-02-2016 Heard learned counsel for the petitioner as well as

learned counsel for the respondents.

2. Petitioner has prayed for setting aside order dated

16.06.2011 passed by Sub-Judge, 1st Patna in Execution Case

No.07/2006, Annuxure-9 which has been filed under Section 47

as well as under Order XXI Rule 97 read with Section 151 C.P.C.

3. I.A No. 5742/2013 has been filed on behalf of



Tehmina Imam @ Tehmina Imam Punvani, cousin sister of petitioner (since deceased) asking for substitution on the basis of a 'Will' executed by the petitioner as well as I.A. No. 6313/2013 has been filed on behalf of Shahnaz Ali wife of petitioner, Faiz Murtaza Ali, Seher Ali, daughter of petitioner (since deceased) for having substitution in their favour which have been taken together and in view of principle laid down by the Hon'ble Apex Court as reported in *AIR 2010 SC 344 (Suresh Kumar Bansal v. Krishna Bansal)* wherein it has been held that for the present all the legal heirs including legatee are to be substituted subject to final adjudication of the 'Will', the prayer so made under above referred both the I.As. are allowed and consequent thereupon, substitution of all the heirs are found tenable in the eye of law and are, accordingly, permitted.

4. Because of the fact that order dated 16.06.2011 purported to be under Order XXI Rule 97 of the C.P.C., was not available to the petitioner, therefore, the rejection of the prayer would not be curable under the present petition.

5. By way of supplementary affidavit, petitioner Tehmina Imam @ Tehmina Imam Punvani has further tried to bring the subsequent event which, cannot be considered at the present moment because of the fact that the order impugned

happens to be dated 16.06.2011 which has been put under challenge and therefore, the subsequent development, in case has caused prejudice or being aggrieved thereby will give a separate cause for which petitioner is well advised to take appropriate steps in accordance with law.

6. The instant petition is rejected.

(Aditya Kumar Trivedi, J)

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