

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.50 of 2007

=====

Akhari Begum, Wife of Mokarram Hussain, R/o Par Nawadah Mirdah Toli, Town,
P.S.+ District-Nawadah.

.... Petitioner

Versus

1. Maqsoodan Khatoon, Widow of Kalimuddin.
2. Ashgar Bhatt.
3. Qashim Bhatt.
4. Md. Idrish Bhatt.
5. Md. Jasim Bhatt.
6. Md. Saheb Bhatt.
7. Md. Alam Bhatt.
8. Chhota Bhatt.
9. Khota Bhatt.

No.2 to 9 are sons of Late Kalimuddin , All resident of Bari Dargah, Ward
No.8, Nawadah, P.S. & District-Nawadah.

10. Sameera Khatoon, Widow of Late Kalimuddin.
11. Majjo.
12. Md. Gainda.

Both sons of Late Kalimuddin.

13. Nazma Khatoon, Wife of Late Sattar.
14. Salma Khatoon, Wife of Md. Anwar.
15. Sameeda Khatoon, Wife of Md. Aslam.
16. Fahmida Khatoon, Wife of Bikku.
17. Roshan Khatoon, Wife of Aarif.

All daughters of Late Kalimuddin, all residents of Mohalla-Bari Dargah, Ward
No.8, P.S.+Town+District-Nawadah.

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s : Mr. Pushkar NMarain Shahi, Sr.Adv.with Sanjeet
Kumar Singh, Adv.

For the Respondent/s : Mr. Shashi Kumar, Adv.
Md. Kamaluddin, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-09-2016

Heard Mr. P.N.Shahi, learned senior counsel
appearing for the petitioner and the learned counsel appearing for
some of the opposite parties.

Earlier the notice in the admission matter was issued upon the opposite parties. The learned senior counsel for the petitioners submits that the notices have been validly served on all the opposite parties.

From the submissions and the materials on record as well as the impugned order, it is manifest that the plaintiff is the petitioner in this application, which has been filed against the order by which the learned court below has rejected the prayer of the plaintiff for impleading the left out heirs of the sole deceased defendant as parties in the suit.

The suit has been filed for eviction of the sole defendant who died during the pendency of the suit. It has not been disputed on behalf of the opposite parties that some of his heirs were substituted in the suit. It is further evident from the submissions that in the civil revision application which was filed by the sole defendant in the year 1999 itself, his heirs filed the petition for their substitution in place of the deceased sole defendant after his death and the said prayer was allowed. After getting the knowledge of the fact that some of the heirs of the deceased sole defendant were still left out, the plaintiff filed the petition which was in substance, for addition of those left out the heirs as parties. By the impugned order the learned court below has turned down the prayer on the basis that the plaintiffs

should have taken steps under Order 22 C.P.C instead of Order 6 Rule 17 C.P.C.

After careful consideration of the matter, this Court holds that the reasons assigned by the learned court below in rejecting the petition filed by the plaintiff-petitioner for adding the left out heirs of the deceased sole defendant as defendants in the suit cannot be legally sustained. It is well settled that the mention of a wrong provision of law is not at all material and it is the substance of the prayer which matters.

This revision application is accordingly allowed and the impugned order is set aside. The prayer of the plaintiff as made in the petition dated 18.08.2006 (Annexure-2) to this revision application is allowed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--