

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14000 of 2014

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Panna Devi wife of Late Ram Raksha Sao, resident of village Dumari, P.S.Amba, District Aurangabad at present residing at Mohalla Shahganj, in the town of Aurangabad, PO+PS District Aurangabad.

.... Petitioner/s

Versus

1.Heera Prasad, son of late Baijnath Prasad.
2.Pintu Choudhary.
3.Mintu Chaudhary
4.Shambhu Chaudhary
5.Nanhak Chaudhary
All sons of late Saryug Chaudhary and Nago Devi. All 2 to 5 are residents of Village Poima, P.s. Muffasil, District Aurangabad.
6.The State of Bihar, the District Magistrate, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeshwar Singh
For the Respondent/s : Mr. PRASHANT PRATAP

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-09-2016

Heard learned counsel for the petitioner.

The plaintiff is the petitioner in this application and has challenged the impugned order by which the learned court below has turned down the prayer of the plaintiff for discarding the appearance of Defendant Nos. 21 to 21C and directing them to personally appear before the Court for verification. The facts as apparent from the present application and the impugned order are that after the death of the Defendant No.21, in the suit the prayer of the plaintiff for substitution of the heirs of the Defendant No. 21 was allowed and the heirs have been substituted as Defendant Nos. 21



to 21C. It further transpires that the direction was issued to the plaintiff to file requisites for issue of notice upon the substituted heirs but the plaintiff did not file such requisites. However, those heirs appeared by filing separate vakalatnama through their lawyer on 23.10.2013. The plaintiff thereafter filed the petition making allegations against the Defendant Nos. 2 to 4 that they had set up some persons to appear as Defendant No. 21 to 21C and a prayer was made seeking a direction from the court to the Defendant Nos. 21 to 21C to personally appear before the court for verification of their identity.

The learned court below in the impugned order has recorded that the identity card issued by the Election Commission of India was produced before the Court by one of the heirs Surendra Choudhary for his identification. The court further has also come to the conclusion that the petition filed by the plaintiff was not supported by affidavit nor any documentary evidence has been produced by the plaintiff in support of the challenge to the identity of the substituted heirs who have appeared in the suit. The learned court below, therefore, has come to the conclusion that the prayer of the plaintiff was only to harass the substituted heirs. It has, however, also been observed that if at any time it would be detected on the basis of valid and cogent reasons that the identity of the



substituted heirs has been correctly disputed, the same shall be examined by the Court. In view of the observations in the impugned order, this court is not inclined to interfere in the same invoking its jurisdiction under Article 227 of the Constitution of India. It further also appears that the suit has been posted for final argument.

The application is, accordingly, dismissed.

The learned court below is directed to proceed for disposal of the suit in accordance with law.

(V. Nath, J)

Ranjan/-

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