

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19769 of 2015

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Shivnath Rai

.... Petitioner/s

Versus

Kameshwar Singh @ Suchun Kumar & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 18-10-2016

Heard the learned counsel, Mr. Binod Kumar Singh for the petitioner and the learned senior counsel, Mr. P.N.Shahi for the respondents.

Perused the impugned order dated 09.11.2015 passed by Sub Judge I, Gopalganj in Final Decree No.88 of 1962 whereby the application filed by the present petitioner for being substituted in place of his father, Parshuram Rai has been rejected.

It appears that Partition Suit No.88 of 1962 was filed by Ramsunder Kuer claiming partition in the property which belonged to her naihar. The property is not of the family of husband of Ramsunder Kuer. The suit was dismissed by the trial court. She filed appeal and during pendency of the appeal, she died. The father of the present petitioner filed application for being substituted before the appellate court in place of Ramsunder Kuer. It was allowed and he was substituted. Ultimately, the trial court judgment was set aside and the partition suit of Ramsunder Kuer



was decreed to the extent of half share. During pendency of the final decree proceeding, father of the present petitioner namely Parshuram Rai also died. This present petitioner filed application for being substituted in place of his father. Another lady i.e. Nibha Kumari @ Durgawati Devi also filed application for being added/substituted in place of the deceased along with the present petitioner claiming that she is the sister of this petitioner. The petitioner denied the parentage of said Nibha Kumari. By the same order, the trial court rejected both the applications i.e. one filed by the present petitioner claiming to be the only son of Parshuram Rai and the other filed by Nibha Kumari claiming to be the daughter of Parshuram Rai on the ground that Parshuram Rai had no right, title and interest in the property as the property is naihari property of Ramsunder Kuer. The present petitioner has filed this writ application against the part of the order. Nibha Kumari also had filed Civil Misc. Case No.48 of 2016 against the other part of the order.

This Court on 02.09.2016 considered the case of the parties and held that Parshuram Rai was substituted in place of Ramsunder Kuer under Order 22 of the C.P.C. Order 22 speaks about the substitution of legal representatives of the deceased. Merely because he has been substituted in place of Ramsunder

Kuer, he will not have any right, title, interest or possession of the naihari property of Ramsunder Kuer. At best, he will be only a legal representative having the right to continue the proceeding. Now, said Parshuram Rai has also died. In such circumstances, when the father of Nibha Kumari has already died, she had no title and interest in the suit property and if final decree proceeding is allowed to be continued then it will occasion failure of justice.

The case of the petitioner is on same footing. He is also claiming to be the son of Parshuram Rai. Parshuram Rai was the devar of Ramsunder Kuer i.e. husband's brother. Admittedly, the property belonged to the naihar of Ramsunder Kuer, therefore, on the death of Ramsunder Kuer the property will not devolve on the heirs of her husband but will go to the heirs of her father. Therefore, when Parshuram Rai had no right, title, interest and possession over the property in suit, he has no right to continue the final decree proceeding. In my opinion, the case of this present petitioner is on same footing. Therefore, the order passed by this Court in the Civil Miscellaneous application filed by Nibha Kumari shall apply mutatis mutandis.

In the result, this writ application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)