

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.299 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 13763 of 2002**

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1. Police Mandal, son of Puran Mandal, resident of Village Shermari, P.O. Katria, P.S. Kurshela, District Katihar.
 2. Ambika Mandal, son of late Shiv Mandal, resident of Village Shermari, P.O. Katria, P.S. Kurshela, District Katihar.
 3. Chunchun Mandal, son of Late Satan Mandal
 4. Rajendra Mandal, son of late Satan Mandal
 5. Butan Mandal, son of Puran Mandal
 6. Adhik Mandal, son of late Shiv Mandal
 7. Menu Mandal @ Maina Mandal, son of late Bhagirath Mandal, All are residents of Village Shermari, P.O. Katria, P.S. Kurshela, District Katihar.

.... Appellants

Versus

1. The State of Bihar.
2. The Collector, Katihar, District Katihar.
3. The Additional Collector, Katihar, (Land Ceiling), Katihar.
4. Mahesh Rajpal, son of Chedi Rajpal, resident of Village Tintenga Diara, P.S. Gopalpur, District Bhagalpur.
5. Bishun Mandal, son of Lakshman Mandal, resident of Village Pakra, P.S. Gopalpur, District Bhagalpur.
6. Narsingh Mandal, son of Darogi Mandal, resident of Village Pakra, P.S. Gopalpur, District Bhagalpur.
7. Krit Narayan Rajpal, son of Chedi Rajpal, resident of Village Tin Tenga Diara, , District Bhagalpur.
8. Upendra Yadav, son of Shankar Yadav, resident of Village Chapar, District Bhagalpur.
9. Harihar Rajpal, son of Sharban Rajpal resident of Village Tin Tenga, P.S. Gopalpur, District Bhagalpur.
10. Mathu Mandal, son of Santoshi Mandal, resident of Village Pakra, P.S. Gopalpur, District Bhagalpur.

.... Respondents

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Appearance :

For the Appellants : Mr. Sarvendra Kumar Verma, Advocate.

Mr. Jai Vardhan Narayan, Advocate.

For the Respondents : Mr. Abbas Haider, S.C. 16

Mr. Ravish Chandra, A.C. to S.C. 16

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 02-05-2016

Re.:I.A. No. 1321 of 2015

The application is for condonation of delay of 505 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 505 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 1321 of 2015 is allowed and delay of 505 days in filing the Letters Patent Appeal is condoned.

Re.:L.P.A. No. 299 of 2015

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 29th of August, 2013 in C.W.J.C. No. 13763 of 2002, whereby the writ

application was dismissed on account of failure to substitute the legal heirs of deceased Respondent Nos. 4 and 5.

2. It has been noticed by the learned Single Bench that the office pointed out on 16th of July, 2013 about the death of Respondent Nos. 4, 5 but the appellants did not take any steps for substituting the heirs and legal representatives of the aforesaid deceased respondents.

3. Consequently, the writ application was found to be incompetent and cannot proceed further. In an appeal against the impugned order, the appellants have again not filed application for impleading the legal heirs of the aforesaid deceased Respondent Nos. 4 and 5.

4. Learned counsel for the respondents has raised a preliminary objection that the appeal is incompetent having filed against the dead persons.

5. Appellants are the Bataidars of Respondent Nos. 4 and 5, the land owners. As per the appellants, Respondent No. 4 died on 31st of December, 2005 and Respondent No. 5 died on 24th of May, 2005. Thus, it transpires that the legal heirs were not substituted for almost eight years after the death of Respondent Nos. 4 and 5.

6. We do not find that any cause is made out to entertain the present Letters Patent Appeal when either in the appeal or by way of an Interlocutory Application, the legal heirs have not been sought

to be substituted. The appeal is against the dead persons and, therefore, the same is not properly constituted.

7. Learned counsel for the appellants vehemently argued that the appellants could not have substituted the legal heirs in the absence of legal heirs having been permitted to be substituted in the writ application.

8. We do not find any merit in the said argument. Once the writ application was dismissed for the reason that legal heirs have not been substituted, it was incumbent upon the appellants to substitute the legal heirs either in the memo of appeal or by way of an Interlocutory Application. Having failed to implead the legal heirs in any manner, we find that the appeal itself is not properly constituted.

9. We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

10. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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