

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22739 of 2011

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1. Ram Chandra Rai S/O Late Upasu Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
 2. Bhagelu Mahto S/O Dhanai Mahto Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
 3. Batohi Mahto S/O Alagu Mahto Resident Of Village- Mirjapur, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
 4. Sheo Mangal Mahto S/O Bhusen Mahto Resident Of Village- Talpuraina, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
 5. Ram Nath Prasad S/O Bhusen Mahto Resident Of Village- Talpuraina, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.

.... Petitioner/s

Versus

1. Shambhu Nath Singh S/O Late Ram Raksha Singh Resident Of Village- Sirisian Jagdeo, At Present Village- Hussainpur, P.S- Amnour, District- Saran.
2. Triloki Nath Pandey S/O Ganesh Pandey Resident Of Village- Piyarpurwa, P.O- Ishrauli Via Mirjapur, P.S- Marhawrrah, District- Saran.
3. Bulendra Pandey S/O Ganesh Pandey Resident Of Village- Piyarpurwa, P.O- Ishrauli Via Mirjapur, P.S- Marhawrrah, District- Saran.
4. Anil Pandey S/O Ganesh Pandey Resident Of Village- Piyarpurwa, P.O- Ishrauli Via Mirjapur, P.S- Marhawrrah, District- Saran.
5. Rajmani Devi W/O Late Rannam Pandey Resident Of Village- Mirjapur, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
6. Sipahi Mahto S/O Alagu Mahto Resident Of Village- Mirjapur, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
7. Amir Chan Rai S/O Late Balk Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
8. The State Of Bihar Through Circle Officer, Marhawrrah, District- Saran.
9. Ram Nand Rai S/O Late Bacha Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
10. Binda Rai S/O Late Bacha Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
11. Isharpati Devi W/O Late Bacha Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
12. Kanchan Rai S/O Late Banarasi Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
13. Lakhiya Devi W/O Late Banarasi Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.
14. Saraswati Devi D/O Late Banarasi Rai Resident Of Village- Wazid Morha, P.O- Mirjapur, P.S- Marhawrrah, District- Saran.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Adv.

Mr. Sanjay Kumar Jha, Adv.

Mr. Ved Prakash Srivastava, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 25-02-2016

Heard learned counsel for the petitioners.

In spite of notice, none appeared on behalf of respondents.

Petitioner is the defendant who is aggrieved by an order dated 13.09.2011 passed by Sub-Judge, IInd, Saran at Chapra in Title Suit No.619 of 2008 whereby and whereunder the learned lower court had allowed the prayer made on behalf of respondent 1st set/plaintiff under Order-XXII Rule-4 of the CPC relating to defendant no.8 Baccha Rai and defendant no.12 Banarsi Rai with regard to whom, it has been pleaded that they died on 13.11.2008 as well as 14.12.2008 respectively.

Learned counsel for the petitioners submitted that Banarsi Rai had died on 13.03.2002 while Baccha Rai had died on 21.06.2003 and to substantiate the same, necessary documents were filed before the learned lower court which were ignored by the learned lower court during course of passing of the order impugned. It has also been submitted that a suit cannot be filed against dead person. The present suit has been filed in the year 2008 and that being so, the death of defendant



no.8 and 12 occurred since before institution of the suit will certainly forfeit the legality of the suit whereunder suit is not at all found maintainable. Furthermore, it has also been pleaded that in such eventuality, the provision for substitution incorporated under Order-XXII of the CPC is not available whereupon, the order impugned found to be out of legal scope whereupon, the same is fit to be set aside.

As stated, there happens to be non-appearance of the respondents/plaintiff and so, the submission made on behalf of petitioner relating to factual aspect is found uncontroverted.

A suit has to be drawn up by a living person against a living one. Therefore, the institution of the suit against a dead person is not at all found permissible. That being so, in case there happens to be truthfulness with regard to assertion of death of defendant no.8 Baccha Rai and defendant no.12 Banarsi Rai to have died much before institution of the suit, then in that event, the aforesaid theme has got bearing more particularly in relation to the relief so sought for. Therefore, learned lower court in the aforesaid eventuality would have decided the controversy whether defendant no.8 and 12 respectively, died before institution of the suit or after institution of the suit. Whereupon, it is apparent from the order impugned that there happens to be

fault at the part of the learned lower court on that very score.

Accordingly, the order impugned is set aside. Petition is allowed. The matter is remitted to the learned lower court to frame the issue on that score and decide the same as a preliminary issue because of the fact that the finding thereupon will have a bearing upon the fate of the suit.

(Aditya Kumar Trivedi, J.)

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