

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.688 of 2010

1. Om Prakash Son of Late Sheo Nath Prasad , resident of Dhanitola, P.S.- Kotwali, District-Gaya.

2. Bhola Prasad, Son of Bangali Lal, resident of mohalla-Morapur Road, P.S.- Kotwali, district-Gaya.

.... Petitioners

Versus

1. Narsing Prasad.

2. Satyadeo Prasad.

3. Gobardhan Prasad.

All sons of Late Bhuin Lal, resident of Mohalla-Makhlotganj, District-Gaya.

4. (a) Kameshwar Prasad Barnawal Son of Basudeo Prasad, resident of Topchanchi near police station, P.O.- Topchanchi, District-Dhanbad.(Jharkhand).

(b) Shrawan Kumar, Son of Basudeo Prasad, Resident of Village-Hariharpur, P.O.-Hariharpur, Via Gomoh, District-Dhanbad (Jharkhand).

(c) Ajit Kumar, Son of Basudeo Prasad, Resident of Village-Khesmi, P.O.- Gomoh, District-Dhanbad (Jharkhand).

(d) Raj Kumar Barnawal, Son of Basudeo Prasad Resident of Village-Hariharpur, P.O.-Hariharpur, Via Gomoh, District-Dhanbad (Jharkhand).

5. Sudama Devi Wife of Baijnath Prasad, resident and post office-Raniganj, District-Gaya.

6. Kauleshwar Devi wife of Bajrang Lal, resident and post office, Raniganj, district-Gaya.

7. Chandrabati Devi wife of Arjun Prasad resident and post office-Rajauli, district-Nawadah.

8. (a) Shambhu Barnawal.

(b) Pappu.

Both sons of Ganesh Lal.

Both Resident of Jyoti Medical Agency, Luxmi Market, Near-Vijay Bank Fateh Bahadur Shiwala Road, P.O.-Gaya, District-Gaya (Bihar).

(c) Shankar Prasad, Son of Ganesh Lal, Resident of Baranwal Stores, Luxmi Market Fateh Bahadur Shiwala Road, P.O.-Gaya, district-Gaya (Bihar).

9. Kamla Devi wife of Kailash Prasad resident of Mohalla-Mokama town, P.S.-
Mokama District-Gaya.

10. Daimanti Devi Wife of Late Dwarika Prasad.

11. Janardhan Prasad.

12. Vijay Kumar.

13. Sanjay Kumar.

14. Dhananjay Kumar.

All sons of no. 10 to 14 of Late Dwarika Prasad resident of mohalla-
Makhlotganj, P.S.-Makhlotganj, District-Gaya.

15. Babuli Lal.

16. Bandi Lal.

17. Munna.

All sons of no.15 to 17 of Late Ramchandra Prasad, resident of mohalla-
Morapur, P.S.-Kotwali, district-Gaya.

18. Srimati Kunti Devi daughter of Darmi Lal wife of Karo Lal resident of mohalla-
Morapur, P.S.-Kotwali, District-Gaya.

19. Jugal Kishore Prasad.

20. Dwarika Prasad.

Both sons of no.19 and 20 of Moti Lal.

21. Daibanti Devi daughter of Moti Lal.

All resident of no.19 to 21 at Rajauli, P.S.-Rajauli, District-Nawada.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. T.N.Maitin, Sr.Adv.
Mr.Rajeev Kumar Sinha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-08-2016

Heard Mr. Maitin, learned senior counsel
appearing on behalf of the petitioners.

No body has appeared on behalf of the opposite
parties when this matter has been called out.

It appears that earlier the notice in admission matter was issued to the opposite parties. The learned senior counsel has submitted that the notice as required has been served upon the opposite parties.

From the office note it transpires that this revision application stood dismissed for default as against the opposite party nos.16 to 22.

Mr.Maitin, learned senior counsel for the petitioners submits that these opposite parties 16 to 22 are only formal opposite parties for the purpose of this revision application as they were also defendants in the suit and appeal alongwith the present petitioners.

On merits, it has been submitted by the learned senior counsel that by the impugned order the learned court below has rejected the petition filed by the petitioners for holding the appeal to have abated for non-substitution of the sole appellant Janki Devi and further for non-substitution of the heirs and legal representatives as mentioned in paragraph-5(Annexure-1)of the petition. It has been submitted that even after the substitution of the deceased sole appellant Janki Devi in the miscellaneous proceeding for restoration, no formal petition for substitution was filed in appeal by the heirs, and as such the appeal has abated. It has also been argued that though in

paragraph-5 of the petition these petitioners have categorically pointed out the names and date of death of some of the deceased respondents, but the learned court below has wrongly dismissed the petition stating that those details have not been mentioned by the present petitioners.

No body has appeared on behalf of the opposite parties.

After considering the submissions and from the perusal of the materials on record as well as the impugned order, it is evident that the sole appellant of the appeal in the court below died during the pendency of the restoration application filed for restoration of the appeal which was dismissed for default. However, the heirs of the said deceased sole appellant Janki Devi were substituted in the restoration proceeding, which was ultimately allowed and the appeal was restored. In this backdrop, the contention of the petitioners that as no formal petition has been filed in the appeal after its restoration for substitution of the heirs and legal representatives of the deceased sole appellant leading to its abatement cannot be countenanced in view of the decision of this Court in the case of **Suraj Mandar Vs. Dev Mishra ,AIR 1984 Patna 378**. The learned court below has taken into notice the principle laid down in this decision and thereafter has passed the order directing the office to incorporate the heirs and legal representatives of the sole appellant in the appeal. This Court does not

find that the learned court below has committed error of record or material irregularity in passing the said direction to that extent.

However, it further transpires from paragraph-5 of the petition (Annexure-1) filed by the petitioners in the appeal that some of the respondents as mentioned therein also died during the pendency of the appeal and no steps for substitution were taken. The learned court below has dismissed the prayer for abatement as made by the present petitioners on the sole ground that the details of the deceased respondents regarding their names, date of death etc have not been mentioned in the petition. However, from the perusal of the petition (Annexure-1), it appears that those details are already on record. The learned court below, therefore, has committed error of record in rejecting the prayer of the petitioners for abatement of the suit or appeal with regard to the respondents as mentioned in paragraph-5 of the petition (Annexure-1). The order impugned therefore, is not sustainable to the extent whereby the prayer of the petitioners with regard to the abatement of the appeal due to non-substitution of the heirs and legal representatives of the deceased respondents as mentioned in paragraph-5 of the petition (Annexure-1) has been rejected and is accordingly set aside.

This revision application is allowed in part and the matter is remitted back to the appellate court below for decision

afresh on the petition (Annexure-1) filed by the petitioners to the extent it relates to the prayer for abatement of the appeal for reason of non-substitution with regard to the deceased respondents as mentioned in paragraph-5 of the said petition (Annexure-1). The learned court below is directed to hear the parties afresh on the said petition to that extent and pass order in accordance with law.

(V. Nath, J)

Nitesh/-

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