

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19682 of 2012

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Ratan Kumar Chaudhary S/o Late Achutanand Chaudhary, Resident of Village/
Mohalla- Bhikhanpur, P.S. Kotwali, District- Bhagalpur.

.... Petitioner/s

Versus

1. Laxman Mahato S/o Late Ram Chandra Mahato Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
2. Jagdish Mahato S/o Late Ram Chandra Mahato Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
3. Mahesh Mahato S/o Late Rameshwar Mahto Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
4. Manish Mahto S/o Late Rohin Mahto Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
5. Singeshwar Mahto S/o Late Aghanu Mahto Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
6. Singeshwar Mahto S/o Late Ramdhani Mahto Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.
7. Rajive Mahto S/o Late Ramdhani Mahto Resident of Village- Tarcha Tola Harna, P.S.- Jagdishpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar & Mr. Swapnil Kumar Singh, Advocates
For the Respondent/s	:	Mr. Raj Nandan Prasad & Mr. Nawal Kishor Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-11-2016

Heard learned counsel for the parties.

As prayed for by learned counsel for the petitioner,
he is permitted to appropriately amend the provision of law under
which the application has been filed, from Article 226 to 227 of the
Constitution of India. Let the same be done during the course of the
day.

The petitioner has prayed for quashing of the order dated 09.08.2012 passed in Title Suit No. 34 of 1996 by the Sub-Judge-VIII, Bhagalpur allowing the substitution petition filed by the plaintiff-respondent under Order 22 Rule 3 of the Code of Civil Procedure, 1908, after condoning the delay.

Learned counsel for the petitioner submitted that in Title Suit, in the cross-examination dated 07.01.2011 respondent no. 3, who is one of the plaintiffs in the Suit, has stated that two plaintiffs i.e., Upendra Mahto and Srinath Mahto had died many years back. It was further submitted that inspite of the same, only after almost one and a half years, a substitution petition was filed on 09.05.2012 and the same being allowed after condoning the delay is arbitrary. It was submitted that the ground taken by the plaintiffs that they were illiterate villagers, having no knowledge regarding substitution, is also erroneous since the fact was already stated in the evidence recorded before the Court, which clearly falsifies the plea of ignorance on their behalf. Learned counsel submitted that the death of the plaintiffs no. 3 and 6, being in the year 2006 and 2007, the application being filed in the middle of the year 2012, suffered from gross delay and laches and should not have been allowed.

Learned counsel for the respondents submits that they are illiterate villagers without knowing the intricacies of law

relating to filing of substitution petition in the Suit and, thus, the delay not being deliberate, the same had rightly been allowed. It was further submitted that the Court has imposed cost of Rs. 200/- which is sufficient penalization for such delay.

Learned counsel has relied upon a decision of the Hon'ble Supreme Court in the Case of **Ram Nath Sao v. Gobardhan Sao** reported as **2002 (3) PLJR 247 (SC)**, for the proposition that length of delay is no matter, acceptability of the explanation is the only criterion and further, once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding unless the exercise of discretion is wholly untenable or arbitrary or perverse.

Having considered the rival contentions, in the considered opinion of the Court, the order impugned cannot be sustained. The admitted position is that respondent no. 3, who is the plaintiff in the Suit, in his cross-examination in January, 2011, had clearly disclosed the fact about the death of plaintiffs no. 3 and 6 and thus, the information was both before the Court and was also known to the counsel who was conducting the case and the plea of ignorance of law, does not hold. The suit having been filed, a duly constituted judicial proceeding being underway, and in the same, information



relating to death of any party coming on record, appropriate steps for substitution have to be taken, which in the present case was not done and after almost one and a half years a petition being filed, cannot, in any view of the matter, be condoned on the ground of ignorance of law or illiteracy, moreso, when the death was of two of the co-plaintiffs. The decision relied upon by learned counsel for the petitioner in the case of **Ram Nath Sao** (supra), in paragraph no. 9 clearly lays down the proposition that length of delay is no matter and acceptability of the explanation is the only criterion, and further, the Court should not disturb such finding unless the exercise of discretion is wholly untenable or arbitrary or perverse. In the present case, the substitution petition has been allowed on the ground that it was occasioned by ignorance of law. Such plea, as discussed earlier, is totally untenable for the reason that the matter was being conducted by a legal practitioner in whose presence the fact of death and that too, of two persons being represented by him, who were plaintiffs, was brought on record in the deposition of one of the plaintiffs themselves. Thus, the Court has no hesitation to hold that plea of ignorance of law, in the facts and circumstances of the present case, is totally untenable and fit to be rejected outright. The substitution petition having been filed after a delay of over five years of the deaths having occurred and that too of persons who were

co-plaintiffs, coupled with the fact that the Court and the counsel appearing for the plaintiffs had been made aware of such fact in January, 2011 itself, and still application for substitution and condonation of delay having been filed after almost one and a half years, without doubt suffers from gross and willful delay and laches.

For the reasons aforesaid, the writ application is allowed and the order dated 09.08.2012 passed in Title Suit No. 34 of 1996 is set aside. Consequently, petitions filed on 09.05.2012, under Order 22 Rule 3 of the Code of Civil Procedure, 1908 for substitution and under Section 5 of the Limitation Act, 1963 for condonation of delay, also stand dismissed.

(Ahsanuddin Amanullah, J.)

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