

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13414 of 2013

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1. Abhay Prasad Bhardwaj Son of Late Harkhit Narayan Singh.
 2. Shambhu Narayan Bhardwaj Son of Late Harkhit Narayan Singh.
 3. Anirudh Prasad Singh Son Of Late Harkhit Narayan Singh all are Resident of Village & P.O. Safapur, Police Station and Anchal Matihani, District – Begusarai. Petitioner/s

Versus

1. Daya Shankar Singh Son of Late Shiv Dhari Singh.
2. Nirmal Kumar Singh Son of Daya Shankar Singh both are Resident of Village & P.O. Safapur, Police Station and Anchal Matihani, District – Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-11-2016

Heard Mr. Mishra, learned counsel for the petitioners.

The petitioners in the present application under Article 227 of the Constitution of India have assailed the legal sustainability of the impugned order by which the learned court below has struck off the name of the defendant and allowed the prayer of the plaintiff to add the name of Radha Devi as heir of the deceased substituted defendant Janak Nandani Devi.

The fact is not in dispute that Janak Nandani Devi was the sole substituted defendant and she died during the pendency of the suit. It further transpires that by order dated 20.10.2006 the present defendant-petitioners were substituted in place of the



substituted defendant Janak Nandani Devi after her demise on the prayer of the plaintiff stating therein also that the said Janak Nandani Devi died issueless. It further transpires that later on the plaintiff filed the petition stating that original defendant Ram Balak Singh had a sister Radha Devi who was the rightful legal heir of the deceased Ram Balak Singh and on that basis the prayer was made by the plaintiff to struck off the name of the present defendant-petitioners and add the name of the said Radha Devi in place of the deceased substituted defendant Janak Nandani Devi widow of Ram Balak Singh.

In the present application Radha Devi has not been made party-respondent. After considering the facts and circumstances of the case, the learned court below has come to the finding that the present defendant-petitioners are not the necessary party in the suit and accordingly passed the order striking off their names and add the name of Radha Devi as defendant in the suit.

After considering the submissions on behalf of the petitioners and perusal of the impugned order, it is evident that earlier the present petitioners were substituted in place of the deceased substituted defendant Janak Nandani Devi widow of Ram Balak Singh (original defendant) but later on after discovery of the fact that Ram Balak Singh had left behind her sister Radha Devi, the

plaintiff filed the petition for striking off the names of the present petitioners and adding the name of the Radha Devi as she was the only heir of the deceased original defendant. This Court has not been persuaded to come to the conclusion that the discretion exercised by the court under Order 1 Rule 10 (2) C.P.C. for striking off the names of the present petitioners as defendant in the suit is perverse or unreasonable in any manner. On behalf of the petitioners it could not be shown or established as to how the petitioners suffer loss or prejudice if their names have been struck off from the array of the defendants in the suit.

In the background of these facts, this Court does not find it a fit case to interdict the impugned order by invoking the jurisdiction under Article 227 of the Constitution of India.

Learned counsel has prayed that an observation be made that this order shall not prejudice the interest of the defendants in pursuing their remedy available to them in accordance with law for establishing their right in the suit property.

This Court, accordingly, observes that the impugned order striking off the names of the petitioners would not prejudice the right, title and interest of the petitioners in an action by them in this regard in accordance with law.

Devendra/-

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(V. Nath, J)