

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7266 of 2011

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Mamta Devi wife of Pankaj Singh, R/O Village-Manjhaul, P.O. and P.S-
 Manjhaul, Distt-Begusarai.

..... Plaintiff no.5

.... Petitioner/s

Versus

1. Smt.Vimla Devi wife of Bhagirath Singh.
2. Smt. Kranti Devi wife of Surendra Singh.
3. Bhagirath Singh son of Late Chandra Shekhar Singh @ Bhim Singh.
4. Surendra Singh son of Late Chandra Shekhar Singh @ Bhim Singh, all residents of village and P.O. Rahatpur P.S. Ballia, Distt-Begusarai,

... Defendant 1st Party Respondent/s

5. Shiv Shankar Singh.
6. Mani Bhushan Singh, both sons of late Phulena Singh
7. Manoj Kumar.
8. Niroj Kumar.
9. Chandan Kumar, all minor sons of Ram Dayal Singh, under the guardianship of their father and natural guardian Ram Dayal Singh.
10. Ram Dayal Singh son of Late Suho Singh, all residents of village-Rahatpur, P.O. Rahatpur, P.S. Ballia, Distt-Begusarai.

... Defendants 2nd Party

11. Mostt. Jagtarani Devi widow of late Bichho Singh.
12. Sushila Devi wife of Rabindra Singh.
13. Smt. Dharamsheela Devi wife of Arun Kumar Singh.
14. Parmila Devi wife of Manoj Kumar, all residents of village-Rahatpur, P.O. Rahatpur, P.S. Ballia, Distt-Begusarai.

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Appearance :

For the Petitioner/s : Mr. Pramod Man Bansh, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 08-04-2016 Heard learned counsel for the petitioner. None appears
 on behalf of respondents.

On account of death of defendant no.3, Shakuntala Devi wife of Late Chandra Shekhar Singh @ Bhim Singh leaving behind her two sons, namely, Bhagirath Singh, defendant no.4 and Surendra Singh, defendant no.5, only legal heirs, a petition was

filed on behalf of petitioner/plaintiff on 22.03.2007 for deletion of her name which has been rejected by the learned lower court of Sub-Judge-V, Begusarai in Title Suit No.101 of 1999 which happens to be under challenged in the present petition.

Gone through the order impugned.

The learned lower court failed to conceive that even after death of defendant no.3, Shakuntala Devi, on account of presence of defendants no.4 and 5, her legal heirs, the right to sue survives and on account thereof, there was no question of abatement. Furthermore, in likewise manner, there also happens to be no question of substitution. For the purpose of deleting the name of a deceased party, no limitation is prescribed.

Apart from this, the learned lower court should have perceived that no decree could be passed against a dead person, in case during midst of proceeding, the aforesaid event has been known to the court.

Accordingly, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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