

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.48 of 2016**

=====

Nibha Kumari @ Durgawati Devi

.... Appellant/s

Versus

Suchun Kumar Singh & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 02-09-2016 Heard the learned counsel, Mr. Chandra Kant for the
petitioner.

This application under Article 227 of the Constitution has been filed against the order dated 09.11.2015 passed by Sub Judge I, Gopalganj in Final Decree No.88 of 1962 whereby an application filed by the present petitioner has been rejected and the final decree proceeding has been dropped recording a finding that father of the present petitioner and her brother had no share in the property and, therefore, they cannot continue the final decree proceeding.

It appears that one Ram Sundar Kuer filed Partition Suit No.88 of 1962 with regard to the property of her Naihar i.e. ancestral property of Naihar wherein the relation of her father were the defendants. Admittedly, the property is not belonging to the family of husband of Ram Sundar Kuer. The suit was



dismissed by the trial court. She filed appeal. In appeal, she died and in her place, her dewar was substituted namely Parsuram Rai. Ultimately, the trial court judgment was set aside and the partition suit of Ram Sundar Kuer was decreed to the extent of half share. Pursuant to that decree, the final decree was proceeding wherein the defendants filed many applications raising the plea that dewar of Ram Sundar Kuer, Parsuram Rai has no title or right to continue the final decree proceeding but the same were rejected by the trial court as well as by the High Court on one ground or the other i.e. the same may be raised at subsequent stage or that in appeal etc. From perusal of the order passed by the High Court, it appears that it was never noticed that the property i.e. the subject matter of partition suit is the Naihari property of Ram Sundar Kuer wherein the relation of husband of Ram Sundar Kuer are the defendants.

So far substitution of Parsuram Rai is concerned, it is only under Order 22 C.P.C.. He was substituted. Order 22 speaks about legal representatives only and not the heirs. Therefore, merely because he has been substituted in place of Ram Sundar Kuer, he will not acquire any right, title, interest or possession of the Naihari property of Ram Sundar Kuer. At best, he will be only a legal representative having the right to continue the proceeding. Now, he has also died. In such circumstances, when the father of

the present petitioner and her brother has no title and interest in the suit property, if the final decree proceeding is allowed to be continued, then it will occasion failure of justice. If at all the present petitioner and her brother have got any right, title and interest in the subject matter of Partition Suit No.88 of 1962, they are at liberty to institute another proceeding but so far in this final decree proceeding, their rights cannot be decided in view of the admitted position that the property is of Naihar of Ram Sundar Kuer.

In view of the above facts and circumstances of the case, in my opinion, the learned Court below has rightly dropped the final decree proceeding. Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--