

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1097 of 2016**

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1. Aaditya Kumar Singh S/o late Umakant Singh Resident of Village Ratanpur Waini Shakmohan P.S And Anchal Bibuitipur District Samastipur.

.... Defendant/Petitioner 1st party

Versus

1. Sri Arbind Kumar Singh S/o Baidyanath Singh Resident of Village Ratanpur Waini Shakmohan P.S And Anchal Bibuitipur District Samastipur.

..... Plaintiff/Respondent

2. Ashok Singh S/o late Ramdeo Singh

3. Indradeo Singh S/o late Sagar Singh

4. Babita Singh S/o late Arun Singh

All 2 to 4 are Resident of Village Ratanpur Waini Shakmohan P.S And Anchal Bibuitipur District Samastipur.

5. Nitu Devi Father name not known

6. Dipu Kumar Son of late Umashankar Singh

7. Sheo Kumari Devi Wife of late Kailash Singh

8. Dhiraj Kumar Son of late Kailash Singh

9. Manoj Kumar Son of late Harinandan Singh Respondent No. 5 to 9 are resident of Village Ratanpur Waini Shakmohan P.S And Anchal Bibuitipur District Samastipur.

.... Defendant/Respondent- IInd Party

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Appearance :

For the Appellant/s : Mr. Anil Kumar Roy, Advocate

For the Respondent/s : Mr.

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

ORAL ORDER

3 23-11-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated



19.12.2014, passed by the learned Munif, Rosera in Title Suit No. 83 of 2001, whereby the learned court below has allowed the substitution application filed by the plaintiff/respondent. The defendant has filed this Civil Miscellaneous application on the ground that the court below should have first decide the heirship of the deceased Pappu Kumar Singh, but without deciding the same the court below has substituted one Nitu Kumari alleged wife of deceased Pappu Kumar Singh, who was the brother of the petitioner.

It may be mentioned here that except the plaintiff, who is saying that Nitu Kumari is the widow of Late Pappu Kumar Singh, no other person is coming to the Court, claiming to be the widow of Late Pappu Kumar Singh. Therefore, when there is no dispute that who is the legal representative, out of more than one person, there is no question of proceeding under Oder 22 Rule 5 C.P.C. arises. The plaintiff filed an application for substitution of the widow and the court below has allowed the application. The petitioner is disputing that she is not the widow. If at all she is not the widow, then this matter is a dispute between the defendant inter see which cannot be decided in this Suit. If the petitioner is aggrieved, then he may initiate separate proceeding for appropriate relief against Nitu Kumari.

However, so far as this Civil Miscellaneous application is concerned, since only substitution application

has been allowed, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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