

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1302 of 2016**

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Ram Prasad Pandit & Ors

.... Appellant/s

Versus

Smt. Banarsi Devi & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajni Kant Jha

For the Respondent/s : Mr.

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

ORAL ORDER

2 09-12-2016

Heard the learned counsel for the petitioners.

Perused the impugned order dated 01.08.2016 passed by Sub Judge IX, Vaishali at Hajipur in Title Suit No.61 of 1994 whereby the learned Court below has allowed the intervention application of the intervener-respondent, Kamlesh Pandit.

It appears that this suit is being heard analogously with Title Suit No.112 of 1994. Defendant No.1 in this suit was one Ram Sharan Pandit. On his death, application for deletion of his name was filed by the present petitioners and by terms of order dated 22.01.2007, the application was allowed. Subsequently, an application has been filed by Kamlesh Pandit, respondent No.2 herein for being added as party in the suit on the ground that he is the son of Ram Sharan Pandit, defendant No.1. The Court below by the impugned order has allowed this application.

The grievance of the petitioner is that in 2007 also,



respondent No.2 Kamlesh Pandit had filed an application for substitution but no order was passed on that substitution application and the application filed by the petitioners for deleting the name of Ram Sharan Pandit has been allowed. The learned counsel submitted that in fact, respondent No.2, Kamlesh Pandit is the son of one Mahesh Pandit and is not the son of Ram Sharan Pandit, defendant No.1. Therefore, the learned counsel submitted that the Court below could not have allowed the application for intervention particularly when prayer for substitution has already been rejected in the year 2007 which was never challenged by Kamlesh Pandit.

Perused the impugned order. The order of the year 2007 i.e. 22.01.2007 is also Annexure 1. The plaintiff filed application for deletion of the name of deceased defendant No.1 and the Court below has allowed the said application and deleted the name of defendant No.1. It further appears that in Title Suit No.112 of 1994, which is being heard analogously with this Title Suit No.61 of 1994, Kamlesh Pandit, respondent No.2 herein is already party as plaintiff and no prayer has been made for substitution in the present case by the plaintiff.

In view of the submission of the learned counsel for the petitioners, the question whether respondent No.2, Kamlesh



Pandit is son of defendant No.1 of this suit namely Ram Sharan Pandit or is the son of Mahesh Pandit as alleged by the petitioner becomes the issue in the suit for decision and this issue regarding parentage of Kamlesh Pandit is required to be decided in presence of Kamlesh Pandit. In his absence in the suit, this issue cannot be decided and, therefore, he is a necessary party in the present suit. The Court below has, therefore, rightly added him as party in the present suit being the necessary party.

Thus, I find no reason to interfere with the impugned order. Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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