

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14707 of 2013

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1. Sheo Kumar Prasad Mali @ Sheokumar Prasad.
 2. Jai Ram Bhagat both S/O Late Bakhori Bhagat Mali Resident Of Thana Road, Wrisaliganj, P.O+ P.S- Warisaliganj, District- Nawada.

.... Petitioner/s

Versus

Ram Ratan Singh S/O Late Nunulal Singh Resident Of Village- Makanpur, P.S- Wrisaliganj, District- Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bankey Bihari Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-12-2016

Heard learned counsel for the petitioners.

The present application under Article 227 of the Constitution of India has been filed questioning the legal acceptability of the impugned order by which the learned court below has rejected the prayer of the plaintiff-petitioners for substitution of the names of the heirs and legal representatives of the deceased plaintiff no. 2.

The matrix of facts discloses that there were altogether five plaintiffs in the suit which was filed for declaration of title and confirmation/recovery of possession. During the pendency of the suit, a petition (Annexure-2) was filed on behalf of the plaintiffs stating clearly that after filing of the suit there had been amicable partition between the parties in which only plaintiff no. 1 and plaintiff no. 3



had been allotted the suit property in their share whereas plaintiff nos. 2, 4 and 5 have been allotted property elsewhere. However, even during the pendency of the said petition without making any reference of the pendency, another petition was filed on behalf of the same plaintiffs praying for substitution of the heirs and legal representatives of the deceased plaintiff no. 2. Though in the said petition (Annexure-3) the mention of the fact that plaintiff no. 2 has now no more any interest in the suit property after partition was mentioned but the fact of filing of the petition (Annexure-2) with the prayer for deleting the name of the plaintiff no. 2 was not brought to the notice of the court.

Learned counsel for the defendant-respondent has supported the impugned order.

After considering the submissions and materials on record, it is manifest that the present petitioners as plaintiffs in the suit have already made prayer for striking off the names of the plaintiff nos. 2, 4 and 5 from the array of the plaintiffs in the suit. During the pendency of the said petition and without pressing or making reference of the same, another petition was filed praying for substitution of the deceased plaintiff no. 2 which prayer is totally inconsistent with the earlier prayer made on behalf of the same plaintiffs. This Court, therefore, is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India for



interdicting the impugned order.

The application is, accordingly, dismissed.

However, the petitioners shall be at liberty to press their petition at Annexure-2, which would be disposed of by the learned court below on its own merits.

(V. Nath, J)

Devendra/-

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