

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3981 of 2013

IN

First Appeal No. 514 of 1979

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1. Hari Chodhary @ Hari Pd. Choudhari son of Late Mthura Choudhary, resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 2. Kuer Choudhary Son of Late Mohan Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 3. Ramjash Choudhary Son of Kuer Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 4. Dasrath Choudhary Son of Late Mohan Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 5. Zomdhari Choudhary alias Lall Dhari Choudhary Son of Mohan Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 6. Ramagya Choudhary Son of Kuer Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur
 7. Ganesh Choudhary Son of Ramagya Choudhary resident of Village- Narayana Garh, P.S- Piro, District - Bhojpur

.... Petitioner/s

Versus

1. Raj Grihi Choudhary son of Gobardhan Choudhary
 2. Mandodari Devi W/o- Late Balmukund Choudhary.
 3. Vijay Kumar Choudhary
 4. Bijendra Choudhary, both are sons of Late Balmukund Choudhary
 5. Bhagmani Devi @ Mungia Devi W/o- Late Kesho Choudhary
 6. Bedami Devi W/o- Prayag Choudhary
 7. Laxmina Devi W/o- Phulendra Choudhary
 8. Mosmat Reshmi Devi W/o- Sheo Pujan Choudhary
 9. Sheo Bachan Choudhary
 10. Shivadhar Choudhary, both are sons of Sheo Pujan Choudhary
 11. Mosmat Lakhpata W/o Late Bhanu Choudhary
 12. Bilar Chodhary son of Chanu Choudhary
 13. Sipahi Choudhary, All are resident of Village-Narayan Garh, P.S.-Jitaura, District-Bhojpur.
 14. Mosmat Sukhia Kuer W/o Suba Choudhary
 15. Sakurna Devi W/o Late Baban Choudhary
 16. Raja Nand Choudhary
 17. Prithraj Choudhary
 18. Tribhuvan Choudhary
- SI.No.16,17 and 18 are sons of Late Baban Choudhary
19. Kaushalaya Devi W/o Kedar Choudhary
 20. Dhanbarta Kumari W/o Ramjee Choudhary
- Both are Ds/o Late Baban Choudhary
21. Phuljharo Kuer W/o Late Verma Choudhary
- All are resident of Village-Narayan Garh, P.S.-Jitaura, District-Bhojpur.
22. Duleshwari Devi W/o Shankar Choudhary resident of Village-Baunokha, P.S.- Nokha, District-Rohtas.
 23. Dulhin Dukhani W/o now known resident of Village-Munika, P.S.-Pali, District-Patna.

24. Dulhin Sukbaisa, W/o Laxman Choudhary resident of Village-Chandi, P.S.-Bikram, District-Bhojpur.

.... Opposite Parties.

Appearance :

For the Petitioner/s : Mr. Narendra Kumar-Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 8-03-2016

I. A. No.7181 of 2014

Petitioners have asked for restoration of First Appeal No.514 of 1979, which was dismissed on account of non-compliance of order dated 02.02.2006 vide order dated 06.07.2006. The order dated 02.02.2006 was peremptory in nature relating to issuance of appeal notices against respondent no.1(1), 1(3) whereupon the aforesaid First Appeal No.514 of 1979 met with ultimate result in the background of the fact that the aforesaid appeal had arisen out of Partition Suit.

While the instant M.J.C. remained pending, I.A. No.7181 of 2014 has been filed for substitution of Opposite Party No.1, Rajgrihi Choudhary, Opposite Party No.2, Mandodari Devi, Opposite Party No.5, Bhagmania Devi @ Mungia Devi, Opposite Party No.8, Mosmat Reshmi Devi, wife of Sheo Pujan Choudhary, Opposite Party No.12, Bilar Choudhary, Opposite Party No.19, Kaushalaya Devi, Opposite Party No.21, Phuljharo Kuer on account of their death



without disclosing the date of their death, respectively. Subsequently thereof, supplementary affidavit has been filed on behalf of petitioners whereunder it has been incorporated that Opposite Party No.1, Rajgrihi Choudhary had died on 28.05.2005 leaving behind heirs, out of whom one is already on record, Opposite Party No.2, Mandodari Devi died on 30.08.1989, however, as their heirs are already on record, only for deletion, Opposite Party No.5, Bhagmania Devi @ Mungia Devi died on 05.10.1995 without any legal heirs, only for deletion, Opposite Party No.8, Mosmat Reshmi Devi died on 22.05.2009 leaving behind her heirs, who are already on record as Opposite Party Nos.9 and 10, only for deletion, Opposite Party No.12, Bilar Choudhary died on 05.04.1980 leaving behind his wife Saudamiya Devi, who also died and on account thereof, only for deletion, Opposite Party No.19, Kaushalaya Devi without specifying the date, without leaving any legal heir, so only for deletion and Opposite Party No.21, Phuljharo Kuer died on 07.09.2012, leaving behind two daughters, who are to be substituted.

The learned counsel for the petitioners submits that substitution as well as deletion of respective opposite parties be accordingly, made.

In terms of Article-120 and 121 of the Limitation Act, the substitution is to be made within 90 days and further, to recall the

effect of abatement should also be carried out within 60 days. In certain circumstance, the aforesaid period is to be extended and for that, necessary prayer has to be made.

No such prayer has been made on behalf of petitioners on that very score, whereupon I.A. No.7181 of 2014 is found non-tenable in the eye of law.

Consequent thereupon, same is rejected.

Being it a partition suit, wherein presence of every co-sharer is essential. That being so, rejection of aforesaid I.A. makes the instant petition vulnerable, hence instant M.J.C. is found non-maintainable, and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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