

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.875 of 2016**

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1. Bhola Chaudhary s/o Late Jhhapsi Chaudhary, R/o Vill.- Khaap Bankat, Tola- Kadia Tiwari, P.O- Kolpur, P.S- Nautan, Distt.- Siwan, Lunatic, through his guardian Ramasheesh Chaudhary @ Ramasheesh Yadav.

.... Petitioner/s

Versus

1. Ganesh Chaudhary.
2. Tuntun Chaudhary
3. Jai Lal Chaudhary
4. Ramakant Chaudhary. All S/o Late Jiyan Chaudhary R/o Vill.- Khaap Bankat Tola- Kadia Tiwari, P.O.- Kolpur, P.S- Nautan, Distt.- Siwan.
5. Bhagrasan Chaudhary
6. Nagendra Chaudhary
7. Yogendra Chaudhary All S/o Late Paltan Chaudhary R/o Vill.- Khaap Bankat, Tola- Kadia Tiwari, P.O- Kolpur, P.S- Nautan, Distt.- Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

3 21-12-2017 Heard both sides.

The petitioner has filed this petition against the order dated 01.06.2016 passed in Title Suit No.61 of 2008 by the learned Munsif II, Siwan.

Bhola Choudhary filed Title Suit No.61 of 2008 for declaration of title over the suit property mentioned in schedule of the plaint and for grant of permanent injunction against the defendant. During the pendency of the suit, the petitioner filed petition that his father Bhola Chaudhary is mentally infirm and



lunatic and, therefore, he may be allowed to represent the case of his father but the petition of the petitioner was dismissed on 28.03.2016 on the ground that the petitioner did not file any documents showing that he is the son of Bhola Chaudhary. Thereafter, the petitioner again filed petition on 11.04.2016 stating the facts that his father is suffering from dementia and he is mentally infirm, therefore, he may be allowed to do the needful in the suit on behalf of his father but the learned Munsif dismissed the petition on the ground that the certificate filed by the petitioner about the mental condition of the father of the petitioner is not issued by a Neuro Physician.

On the contrary, Mr. Ram Chandra Singh, learned counsel for the respondents submits that Bhola Chaudhary was examined and partly cross-examined. Bhola Chaudhary admitted the case of the defendant in para 23 and 25 of his cross-examination and his cross-examination was deferred but thereafter he did not appear and there is nothing on record to show that Bhola Choudhary is of unsound mind and mentally incapable so that he cannot pursue his case.

The question arises for consideration whether the order of learned Munsif suffers from any jurisdictional error?

Rule 15 of Order 32 of the Code of Civil Procedure



says that **“Rules 1 to 14 shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”**

This provision casts duty on the Court that if a person, son of a party to the suit files petition that his father is incapable of protecting his interest on account of mental incapacity, the Court has bounden duty to hold an enquiry about mental incapability of the person, if the Court is not satisfied by the prescription of a doctor about the mental condition of the person.

From the order of the learned Munsif, it appears that the learned Munsif has rejected the petition of the petitioner on the ground that the petitioner failed to file the certificate about the mental infirmity of his father by expert Neuro Physician. Admittedly, the petitioner lives in village and his father was treated by the doctor available in the Sadar hospital who gave certificate that Bhola Chaudhary, the father of the petitioner is suffering from dementia and as such, the father of the petitioner is mentally incapable of taking step in his own case.

If the learned Munsif is not satisfied with the certificate



of the doctor, he should have held enquiry about the mental unsoundness of the father of the petitioner but without holding any enquiry, the learned Munsif erroneously and illegally rejected the petition. Thus, the order dated 01.06.2016 is set aside and this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

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