

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.2110 of 2009

- =====
1. Sachchida Nand Tiwary
 2. Anil Kumar Tiwary
 3. Sunil Tiwary

All are sons of Jay Govind Tiwary, R/O Vill- Khera, P.S- Bhabua, Distt- Kaimur (Bhabua), At Present Mauza - Ghataun Tola Fakarabad, P.S-Kudra, Distt- Kaimur (Bhabua)

.....Plaintiffs/ Petitioner/s

Versus

1. Bhuneshwar Yadav S/O Late Ram Nath Yadav
2. Satyendra Kumar Yadav S/O Bhuneshwar Yadav
3. Smt. Panchari Devi W/O Bhuneshwar Yadav

All are resident of Ghataon Tola, Saraiya, P.O- Fhakarabad, P.S- Kudra, Distt- Kaimur, Bhabua.

Opposite party 1st set Defendant

4. Rajendra Pandey S/O Ram Janam Pandey,
5. Rameshwar Pandey, S/O Rajendra Pandey
- Both resident of Village- Dhakahari P.S- Bhagawanpur, Distt- Kaimur, Bhabua
6. Smt. Manju Devi W/O Sri Om Prakash Tiwary, R/O Vill- Akhlaspur, P.S- Bhabua, Distt- Kaimur
7. Smt. Shanti Devi W/O Sri Sheopujan Shukla, R/O Vill- Sonebarasa, P.O- Khujura, P.S- Balawaon, Distt- Kaimur, Bhabua
8. Smt. Lila Devi W/O Sri Agand Mishra R/O Vill- Gobhamkha, P.S- Bhagwanpur, Distt- Kaimur, Bhabua

...Opposite Party 2nd set/Defendant 2nd set

09. Jay Govind Tiwary
10. Ram Govind Tiwary
11. Hari Govind Tiwary,

Opposite Party nos. 9 to 11 are sons of Late Yamuna Tiwary,

12. Ashu Tiwary, S/O Ram Gobind Tiwary
13. Mathura Tiwary
14. Abhay Tiwary
15. Badhan Tiwary

Opposite Party Nos. 13 to 15 are sons of Sri Hari Govind Tiwary

16. Thari Tiwary
17. Rabi Tiwary

Both minor sons of Sri Sachidanand Tiwary under Guardianaship of Sri Sachidanand Tiwary.

All are Opposite Party nos. 9 to 17 are resident of village-Kori , P.S- Bhabua, Distt- Kaimur (Bhabua)

... Opposite Party 3rd set/ Plaintiffs

18. Sri Nivas Choudhary @ Dudul Choubey
19. Sri Prem Chand Choubey
20. Sri Lakshman Choubey

All Opposite party nos. 18 to 20 are sons of late Ram Sakal Choubey

21. Sri Ashok Choubey
22. Sri Komal Choubey



23. Ajay Choubey

24. Pintu Choubey

All Opposite Party nos. 21 to 24 are sons of Sri Niwas Choubey @ Dudul Choubey

25. Ayodhya Choubey S./O Lakshman Choubey

All Opp.Party nos. 18 to 25 are residents of Village- Phakarabad, P.S- Kudra, Distt- Kaimur.

Opposite party No. IV set, Defendant 3rd set.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Kamla Kant Tiwary

For the Opposite party

nos. 1 to 3 : Mr. Jai PerakashSingh

For Opposite Party

Nos. 18,22,23 and 25 : Mrs.Arati Kumari

Mr. Navnit Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioners as well as learned counsel appearing for the opposite party.

The petitioners have challenged the order dated 21.10.2009 passed by the learned Munsif, Bhabua, Kaimur in Title Suit No. 217 of 2001 by which the learned Munsif, Bhabua, Kaimur, rejected the petition dated 09.07.2009 filed on behalf of the petitioners for recall of order dated 19.05.2009 by which the permission to withdraw the aforesaid Title Suit was granted to the petitioners.

It would appear from the records as well as submissions of the parties that the petitioners and some others filed Title Suit No. 217 of 2001 against the opposite party but during pendency of the aforesaid Suit, a withdrawal petition was filed on behalf of the petitioners and the learned Munsif having considered the prayer of the petitioners permitted them to withdraw the Suit but debarred them from filing fresh Suit on the same cause of action. However, since



there were other plaintiffs also, the learned Munsif permitted remaining plaintiffs to continue the above said Title Suit. Subsequently, on 09.07.2009 a petition was filed on behalf of the petitioners before the learned Munsif for recall of the order dated 19.05.2009 but the learned Munsif refused to recall the aforesaid order and accordingly rejected the petition dated 09.07.2009 passing the impugned order dated 21.10.2009, against which this revision petition has been preferred.

At the very outset, it is brought to the notice of this Court that against the order dated 19.05.2009, a separate civil revision bearing Civil Revision No. 132 of 2013 along with I.A.No. 6014 of 2013 were filed before this Court but the coordinate Bench of this Court dismissed the aforesaid revision petition treating the same as barred by limitation vide order dated 16.05.2016. Therefore, it is obvious from the above facts that the order dated 19.05.2009 passed by the learned Munsif in Title Suit No. 217 of 2001 has already attained finality.

Learned counsel appearing for the petitioners submits that as a matter of fact the concerned conducting Advocate under some misconception filed petition for withdrawal of Suit and insisted upon the Court for passing order of withdrawal and thereafter the learned Munsif passed the order dated 19.05.2009. However, as soon as the mistake of concerned counsel was realized, immediately, petition for recall of order dated 19.05.2009 was filed before the learned Munsif but the learned Munsif without giving proper hearing as well as proper reason rejected the aforesaid petition passing impugned order dated 21.10.2009 and, therefore, the impugned order should be set aside.

I am not at all convinced with the aforesaid submission of the learned counsel for the petitioners and in my view there is no scope for setting aside the order dated 21.10.2009 particularly, in the circumstances when the order



dated 19.05.2009 has already attained its finality as the coordinate Bench of this Court has already refused to interfere with the order dated 19.05.2009. Therefore, in the aforesaid circumstances, I do not find any merit in this civil revision petition and this revision petition, in my view, is liable to be dismissed on admission stage itself.

I.A.No. 3316 of 2014 and I.A.No. 3234 of 2016 have been filed on behalf of the petitioners for substitution of legal representatives of deceased opposite party no.20.

I.A.No. 3316 of 2014 has been filed for substitution of opposite party no.20, who is said to have died on 13.02.2015 leaving behind his mother, namely, Shail Kumari and other legal representatives. The mother of the deceased opposite party no.20 is not party to this petition though other legal representatives of deceased opposite party no.20 are already on record. Moreover, when this Court does not intend to interfere into the impugned order dated 21.10.2009, there is no need for any substitution and for issuance of notice to legal representatives of deceased opposite party no.20.

In view of the aforesaid facts and circumstances of the case, this revision petition stands dismissed at admission stage itself and accordingly I.A.No.3316 of 2016 stands disposed of.

(Hemant Kumar Srivastava, J)

singh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

