

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.447 of 2017

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Ganauri Ram, son of Late Sudheshwar Ram, resident of Village- Kaler, Tola- Paharpur, P.S.- Kaler, District- Arwal.

.... Appellant/s

Versus

1. Ashok Kumar Singh, son of Sri Ram Kishore Prasad Singh,
2. Smt. Radha Devi, wife of Ram Kishore Prasad Singh,
3. Smt. Swarnlata Devi, daughter of Ram Kishore Prasad Singh,
4. Smt. Chitra Kumari, daughter of Ram Kishore Prasad Singh,
5. Smt. Jaya Ray, daughter of Ram Kishore Prasad Singh,
6. Mrs. Nivedita Nirvikar, daughter of Ram Kishore Prasad Singh, All residents of Village- Turk Telpa, P.S.- Karpi, District- Arwal.
7. Brajesh Kumar, son of Ramji Singh,
8. Sudhir Kumar, son of Ramji Singh,
9. Sanju Devi, wife of Naresh Kumar, Respondent no.7 to 9 are resident of Village- Kaler, Tola- Paharpur, P.S.- Kaler, District- Arwal.
10. Rajendra Yadav @ Nauhi Singh, son of Late Ram Kishun Yadav,
11. Lalmuni Devi, wife of Mahendra Kumar Singh, Both Res. No. 10 and 11 are resident of Village- Arai, Tola- Raghubanshi Bigha, P.S.- Daudnagar, District- Aurangabad.
12. Ram Ashray Yadav, son of Late Musafir Yadav,
13. Manoranjan Ram, son of Late Ram Bilash Ram,
14. Bideshi Ram, son of Late Birja Ram,
15. Mulhan Ram, son of Late Nanhak Ram,
16. Chanarik Ram, son of Late Deo Charan Ram,
17. Ramdeo Mistri, son of Late Chamru Mistri,
18. Saryu Ram, son of Late Manager Ram,
19. Kameshwar Prasad, son of Late Teslal Sao,
20. Sheo Bilash Ram, son of Late Sheo Nandan Ram,
21. Nanhak Ram, son of Late Manager Ram,
22. Ram Swaroop Ram, son of Late Bigan Ram,
23. Anantu Thakur, son of Late Ram Roop Thakur,
24. Ramesh Sao, son of Sri Bhuawal Sao,



25. Shanker Dayal Singh @ Shanker Dayal Yadav, son of Late Chit Bahal Singh,
26. Ajay Kumar Thakur, son of Sri Kabilash Thakur,
27. Keshav Prasad @ Kesho Sao Khatri, son of Late Devendra Prasad,
28. Ramesh Singh, son of Late Ram Sewak Singh,
29. Ram Ratan Singh, son of Late Mosafir Singh,
30. Chandra Bhushan Singh, son of Sri Ram Baran Singh,
31. Ram Narayan Mistri, son of Late Somaru Mistri, All resident of Village- Kaler,
Tola- Paharpur, P.S.- Mehendiya (Kaler), District- Arwal.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Mrityunjaya Kr. Gautam
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the petitioner.

By the impugned order, the learned court below has turned down the prayer of the petitioner for addition of the heirs and legal representatives of the deceased plaintiff no. 4.

After considering the submissions and the materials on record including the impugned order, it transpires that the date of death of plaintiff no. 4 as mentioned by the petitioner in his petition was contested by other side stating that the plaintiff no. 4 died in fact in the year 2014 itself and not on 13.01.2016 as claimed by the petitioner. The learned court below, however, has recorded that no proof of date of death of the plaintiff no. 4 was filed by the petitioner. It is also apparent from the records that no prayer was made for



setting aside the abatement after condonation of delay.

Learned counsel for the petitioners has submitted that the liberal view should have been taken by the learned court below by treating the petition under Order 1 Rule 10(2) C.P.C. to be under Order 22 Rule 3 C.P.C. However, even if this contention is accepted the requirement for establishing the date of death in view of the denial by the other side and the prayer for condonation of delay and setting aside the abatement cannot be ignored. This Court thus holds that the learned court below has not committed any error in passing the impugned order.

The present application is, accordingly, dismissed.

However, dismissal of this application shall not debar the plaintiff-petitioners from taking appropriate steps, if permissible, in accordance with law.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.07.2017
Transmission Date	

