

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.359 of 2017

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Guneshwar Mishra, son of Late Kapileshwar Mishra, resident of Mohalla-Kashipur, District- Samastipur, Presently posted as Treasurer, Sri Thaneshwar Mandir Samiti, Samastipur.

.... Appellant/s

Versus

1. Sanjay Giri Panda, son of Sakaldeo Giri Panda,
2. Umashankar Giri Panda, Son of Late Mahendra Giri Panda,
3. Chandeshwar Giri Panda, son of Pyare Giri Panda,
4. Sundeshwar Giri Panda, son of Pyare Giri Panda,
5. Ramadhar Giri Panda, son of Rajendra Giri Panda, All are residents of Village-Akhtiyarpur Chandauli Math, PO- Chandauli, Police Station- Baini, District-Samastipur.
6. Sri Ramashankar Prasad, son of Late Mahendra Prasad, resident of Mohalla-Kashipur, near Old Girls College, Samastipur, District- Samastipur, presently President, Sri Thaneshwar Mandir Samiti, Samastipur.
7. Raghunath Prasad Rai, son of Late Jangbahadur Rai, resident of Mohalla-Kashipur, near Morarji Satyendra College, District- Samastipur, at present Vice President, Thaneshwar Mandir Samiti, Samastipur.
8. Deendayal Kabra, son of Shiv Bhagwan Kabra, resident of Marwari Bazar, Samastipur, presently Member, Shri Thaneshwar Mandir Samiti, Samastipur.
9. Rajnandan Prasad, son of Late Mahendra Prasad Singh, resident of Mohalla-Kashipur, Ward No.10, Samastipur, presently Member Shri Thaneshwar Mandir Samiti, Samastipur.
10. Dhanpat Giri Panda, son of Late Pyare Giri Panda, resident of
11. Bihar State Board of Religious Trust, through its President, Vidyapati Marg, P.S.- Kotwali, Town and District- Patna.
12. State of Bihar, through the District Magistrate, Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
Mr. Pankaj Kumar Sinha, Adv.

For the Respondent



B.S.B.R.T : Mr. Ganpati Trivedi, Sr. Adv.

Mr. Manoj Kumar, Adv.

For the State : Mr. Mukul Prasad, A.C. to GP-18

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2017

Heard Mr. Baxi S.R.P. Sinha, learned senior counsel for the petitioner. Learned counsel for the State-respondent as well as learned counsel for the Bihar State Board of Religious Trust are also present.

Questioning the legal tenability of the impugned order by which the learned court below has recalled its earlier order dated 07.04.2015 whereby the suit was dismissed as abated, the present application under Article 227 of the Constitution of India has been filed.

The matrix of facts discloses that during the pendency of the suit some of the defendants died. The plaintiffs filed the petition praying their for substitution after condonation of delay but the same was also dismissed as not pressed. Thereafter, it transpires that a petition was filed by a person named Arun Kumar Thakur who was completely stranger to the suit claiming himself to be the tenant in the suit premises praying for dismissal of the suit as abated. The order was passed on 07.04.2015 holding the suit to have abated and



dismissing the same accordingly. Subsequently, the plaintiffs filed a Misc. Case No. 07 of 2015 praying for recall of the said order but the said misc. case was dismissed as withdrawn on the prayer of the plaintiffs which is apparent from the order dated 11.08.2016(Annexure-P/3) passed in the said miscellaneous case. Thereafter, the plaintiffs filed the Misc. Case No. 09 of 2015 praying for recall of the order dated 07.04.2015. By the impugned order, the learned court below has allowed the prayer of the plaintiffs and recalled the said order.

Mr. Sinha, learned senior counsel for the petitioner has firstly submitted that the learned court below has not at all considered the fact of filing of the earlier Misc. Case No. 07 of 2015 and its dismissal on the ground of withdrawal. It has been next submitted that there was no prayer for substitution on behalf of the plaintiffs with regard to other deceased defendants who also died during the pendency of the suit, and the prayer for substitution was confined only to the defendant no. 1 and as such, the learned court below has committed error in ignoring the said fact and passing the impugned order.

After considering the submissions and the materials on record, it is evident that by the impugned order the learned court below has recalled the earlier order dated 07.04.2015 which was



admittedly passed on the basis of the prayer of a person who was not a party in the suit. It is also evident from the impugned order and from the submissions on behalf of the petitioner that besides the deceased defendants on the record of the suit, there were other defendants including the present petitioner who are still alive. The learned court below, therefore, has come to the conclusion that the right to sue has still been surviving with the plaintiffs. On behalf of the petitioner it could not be shown that non-consideration of the earlier dismissal of Miscellaneous Case No.07 of 2015 on the ground of withdrawal has resulted in failure of the justice. It has also been accepted on behalf of the petitioner that the objection that other defendants were also dead in the suit and with regard to whom no prayer for substitution has been made, has not been raised by the present petitioner in the suit for consideration. In the aforesaid factual background, this Court has not been persuaded to find perversity, unreasonableness or illegality in any manner in the impugned order. This Court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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