

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15177 of 2013

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1. Jagdish Yadav Son Of Late Jitan Yadav Resident Of Village - Singrahi, Police
Station - Laukahi, District - Madhubani

.... Petitioner/s

Versus

1. Baidya Nath Sahu Son Of Late Fanait Sahu Resident Of Village - Singrahi, Post
Office - Laukahi, Police Station - Laukahi, District - Madhubani
2. Smt. Sushila Devi Wife Of Baidya Nath Sahu Resident Of Village - Singrahi,
Post Office - Laukahi, Police Station - Laukahi, District - Madhubani
3. Bishwa Nath Sahu Son Of Late Fanait Sahu Resident Of Village - Singrahi,
Post Office - Laukahi, Police Station - Laukahi, District - Madhubani
4. Kishun Prasad Bhagat Son Of Late Ram Chandra Sahu Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
5. Ram Kumar Sahu Son Of Late Ram Chandra Sahu Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
6. Raj Kumar Sahu Son Of Late Ram Chandra Sahu Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
7. Bal Kumar Sahu Son Of Late Ram Chandra Sahu Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
8. Mahesh Prasad Sahu Son Of Late Ram Chandra Sah Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
9. Vijay Kumar Sahu Son Of Late Ram Chandra Sah Resident Of Village -
Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani
10. Most. Rampari Wife Of Late Ram Chandra Sahu Resident Of Village -



Singrahi, Police Station - Laukahi, Post Office - Laukahi, District - Madhubani

11. Ram Prasad Son Of Late Ram Lakhan Sahu Resident Of Village - Singrahi,
Police Station - Laukahi, Post Office - Laukahi, District - Madhubani

12. Sakun Tala Devi Wife Of Rameshwari Bhagat Resident Of Village - Laluna
More Janakpur Police Station - Janakpur, District - Dhanukha (Nepal)

13. Laxmi Sahu Son Of Late Nathu Sahu Resident Of Village - Singrahi, Post
Office - Laukahi, Police Station - Laukahi, District - Madhubani

14. Surya Prasad Sahu Son Of Late Nathu Sahu Resident Of Village - Singrahi,
Police Station - Laukahi, Post Office - Laukahi, District - Madhubani

15. Jai Kishun Yadav Son Of Late Jitan Yadav

16. Ram Naresh Yadav Son Of Jagdish Yadav

17. Bharat Yadav Son Of Jagdish Yadav

18. Haresh Yadav Minor Son Of Sri Kishun Yadav Under The Guardianship Of
His Father Respondent No. 15.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. PRABHAS RANJAN, ADV
For the Respondent nos 1 & 2.: Mr. SURAJ NARAYAN YADAV, ADV AND
Mr. ARVIND KUMAR, ADV

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-01-2017

Heard learned counsel for the parties.

The facts are not in dispute that during the pendency of
the suit, a petition was filed on behalf of the plaintiff for substitution
with regard to defendant nos. 7 and 8 of the said suit. The said
substitution petition remained pending and no order was passed



either allowing or dismissing the same. However, the suit was disposed of finally by judgment and decree dated 25.09.2008. In the appeal against the said judgment and decree a petition was filed on behalf of the appellants that the defendant nos. 7 and 8 of the suit died during the pendency of the suit and a petition was filed on 21.02.2004 on behalf of the plaintiff in the suit itself and as no order in the suit was passed on the said petition, it was necessary that appropriate order should be passed on the said petition.

By the impugned order the court below has sent back the records to the trial court with a direction that the petition dated 21.02.2004 filed in the suit be heard and disposed of in accordance with law. It is demonstrably clear that the suit has been disposed of and the appeal has been filed. The appellate court below has all the jurisdiction to pass appropriate order in the facts and circumstances of the case but there is no law which gives the jurisdiction to the appellate court to issue a direction to the court below to pass order on the substitution petition filed during the pendency of the suit. It appears that the learned court below could not conceive the ambit and scope of its jurisdiction as an appellate court and is also oblivious of the relevant provisions of the Code of Civil Procedure.

The perversity in the impugned order is clearly explicit where the appellate court during the pendency of the appeal has sent



back the records of the suit to the trial court for hearing on the substitution petition which was filed during the pendency of the suit and pass order on the said petition in accordance with law.

This application is, accordingly, allowed and the impugned order dated 17.08.2012 passed in Title Appeal No. 73 of 2008 is quashed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.02.2017
Transmission Date	N.A.

