

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1258 of 2013
IN
Civil Writ Jurisdiction Case No. 2864 of 1984**

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1. Kalika Roy son of Late Sukh Bilash Roy, Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 2. Raghubansh Roy Son Of Late Parsuram Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 3. Surya Bansh Roy Son Of Late Parshuram Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 4. Nand Kishore Roy Son Of Late Jagarnath Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 5. Ramanuj Roy Son Of Late Raj Bans Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 6. Jai Shanker Roy Son Of Late Raj Bansh Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 7. Basmato Kuer Wife Of Late Rajbansh Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 8. Rama Shanker Roy Son Of Late Kailash Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 9. Janki Kuer Wife Of Late Jag Narain Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 10. Baijnath Roy Son Of Late Jag Narain Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
 11. Shiv Shabhu Roy Son Of Late Jag Narain Roy Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas

.... Appellant/s

Versus

1. The State Of Bihar
2. Joint Director Consolidation, Bihar Patna, Boring Road, Patna
3. Deputy Director of Consolidation, Rohtas at Sasaram
4. Consolidation Officer, Kargahar, District- Rohtas
5. Vijay Upadhya S/O - Late Ramayan Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
6. Deo Muni Upadhya Son Of Late Sheo Bachan Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
7. Deo Raj Upadhya Son Of Late Sheo Bachan Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
8. Bigan Upadhya Son Of Late Karesan Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
9. Girish Upadhya Son Of Late Karesan Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas
10. Suraj Nath Upadhya Son Of Late Ram Sakal Upadhya Resident Of Village- Panapur, P.S.- Karhagar, District- Rohtas

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Helal Ahmad

For the Respondent/s : Mr. Bishwa Bibhuti Kr Singh, AC to PAAG 1

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 04-04-2017

Heard counsel for the appellant and counsel for the State.

Appeal under Letters Patent has been preferred by the appellants, who were petitioners in CWJC No.2864 of 1984. The Court is informed that no LPA has been preferred in CWJC No.10390 of 1993, which was also clubbed and heard together and a common order dated 16.7.2013 was passed, which is under challenge.

Before coming to the merit of matter, the learned Single Judge had this to observe about the party position :

“4. In both the writ petitions, either some of the petitioners or/and some of the respondents have died during the pendency of the main writ petitions. Therefore, separate interlocutory applications in the nature of substitution petitions have been filed on behalf of the petitioners in both the cases.

5. In C.W.J.C. No. 2864 of 1984, Interlocutory Application No. 6042 of 2012 has been filed on behalf of the petitioners stating therein that during the pendency of the main writ petition, petitioner no.2 Most. Brij Kumari died on 21.1.2003, petitioner no. 3 Parsuram Roy died on 29.7.1995, petitioner no.4 Jagarnath Roy died on 5.10.1987, petitioner no. 5 Raj Bans Roy died on 19.2.2012, petitioner no.6 Kailash Roy died on 20.9.1987, petitioner no. 7 Jag Narain



Roy died on 2.7.1987, respondent no. 5 Ramayan Upadhya died on 29.7.2011, respondent no. 6 Sheo Bachan Upadhya died in the year 2002 (specific date of death not disclosed), respondent no. 7 Karesan Upadhya died in the year 1996 (specific date of death not disclosed) and respondent no. 9 Deo Sakal Upadhya died in the year 1995 (again specific date of death not disclosed), leaving behind them their respective heirs and legal representatives, fully detailed in the aforesaid Interlocutory Application No. 6042 of 2012 in different paragraphs. The aforesaid Interlocutory Application was filed on 11.9.2012.

6. In C.W.J.C. No.10390 of 1993, Interlocutory Application No. 8578 of 2010 was filed on 28.9.2010 stating therein that during the pendency of the main writ petition, petitioner no.1 Jage Rai died on 13.3.2008, petitioner no.2 Jaibir Rai died on 3.1.1998, petitioner no.3 Yogendra Rai died on 12.9.2005, respondent no. 12 Saukhi Rai died on 30.8.2009 and respondent no. 17 Kalpat Devi died on 21.4.2008, leaving behind them their respective heirs and legal representatives, who have been fully detailed in the aforesaid Interlocutory Application No. 8578 of 2010 in different paragraphs.

7. From the averments made in the aforesaid two Interlocutory Applications with respect to the aforesaid two writ petitions, it is apparent that steps for substitution of the heirs and legal representatives with respect to some of the deceased petitioners and/or some of the deceased respondents were not taken within a reasonable period of time, and, in fact, in some of the cases for a long period of about 20 to 25



years. In that view of the matter, an objection has been taken by the respondents in both the cases that in view of law laid down by the Hon'ble Apex Court in the case of Puran Singh Vs. State of Punjab ((1996) 2 SCC 205), the prayer for substitution made on behalf of the petitioners or the proposed heirs and legal representatives of deceased persons cannot be allowed at this stage, as the substitution petitions have not been filed within a reasonable period of time, as a result of which both the writ petitions have abated and the contesting private respondents or the heirs and legal representatives of the deceased respondents cannot be compelled to contest their claims, which due to abatement of the aforesaid writ petitions have become final in their favour."

Thereafter the learned Single Judge dealt with the legal questions whether the writ at all should be maintained and whether the rules of limitation for substitution strictly applies to proceeding under Article 226 and 227 of the Constitution of India.

After considering all the issues, the learned Single Judge has rightly come to the conclusion, which is as follows :

"24. Consequently, Interlocutory Application No. 6042 of 2012 and Interlocutory Application No. 8578 of 2010, filed in C.W.J.C. No. 2864 of 1984 and C.W.J.C. No. 10390 of 1993 respectively with respect to the deceased petitioners and/or deceased respondents, whose death has taken place more than three year earlier from the date of filing of the aforesaid



Interlocutory Applications stand dismissed

25. In view of abatement of the aforesaid writ petitions on account of non-substitution of heirs and legal representatives of the deceased petitioners or deceased respondents within a reasonable period of time of three years, both the writ petitions have become incompetent and cannot proceed further, since there cannot be conflicting judgments with respect to a dead person and surviving person in a common lis.”

In the given circumstances and the fact, the dismissal of the writ applications was in order and no indulgence is required to be given any further by interfering with the said order in any manner. The Court is not unmindful of the fact that the issue arose in the year 1979, the writ application was initiated in the year 1984 and, therefore it is bound to take its toll upon the litigants over the period of time.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

