

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.791 of 2016

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1. Shambhu Nath Singh Son of late Parash Nath Singh, resident of village Bharsara Yadav, Post office Bharasara , Police Station Bihiay, District Bhojpur
..... Petitioner

Versus

1. Umesh Kumar Singh son of Paras Nath Singh, resident of village Bharasara Yadav, Post office Bharasara, Police Station Bihia, District Bhojpur.
2. Umarawai Devi daughter of Paras Nath Singh wife of Shri Ram Singhasan Singh, Resident of village yadavpour, Post office mahuaon, Police Station Tiar, District Bhojpur
3. Smt Pravawanti Devi daughter of Paras nath Singh, widow of late Ramesh Singh, resident of village Kholua, Police Station Chinh, District Tijopur (UttarPradesh).
4. Ramawati Devi daughter of Paras Nath Singh wife of Satyendra Singh, resident of village Arak, Police Station Krishnabraham, District Buxar
..... Respondents

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Appearance :

For the Petitioner : Mr. Shyama Kant Singh, Adv.

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

5 30-11-2017

Heard the learned counsel for the petitioner-plaintiff.

No body appears on behalf of the respondents.

The petitioner has filed this civil miscellaneous petition under Article 227 of the Constitution of India against the order, dated 07.06.2016, passed in Title Suit No. 255 of 2003 for substitution of the legal heirs of his father, Paras Nath Singh, who died on 15.08.2015 by Sub Judge, Jagdishpur, Bhojpur at Ara, by which the learned Sub Judge rejected the petition of the plaintiff for substitution of alleged three daughters of Paras Nath Singh.

The learned counsel for the petitioner-plaintiff submits that the plaintiff filed petition on 05.10.2015 substituting the names of three daughters of Paras Nath Singh. Paras Nath Singh had two sons, namely, Shambhu Nath Singh, the plaintiff,



and Umesh Kumar Singh. Shambhu Nath Singh filed the suit for partition of the ancestral property against his father, Paras Nath Singh, and brother Umesh Kumar Singh. It is submitted that during the pendency of the suit Paras Nath Singh, defendant no. 1, the father of the plaintiff, died and the petitioner-appellant filed substitution petition for substituting the name of three daughters of Paras Nath Singh. The Circle Officer issued genealogical table (Annexure 4) showing that Paras Nath Singh got two sons and three daughters. It is, further, submitted that if the Court finds any dispute with regard to legal heirs of deceased, the Court can hold enquiry under Order 22 Rule 5 of the Civil Procedure Code. Rule 5 of Order 22 of the Civil Procedure Code provides that the Court shall hold an enquiry as to who is the legal representatives of deceased, but, no such enquiry as envisaged under Rule 5 of Order 22 of the Civil Procedure Code is made and the Court summarily dismissed the petition of the petitioner-plaintiff.

From the perusal of the records, I find that after filing the suit the plaintiff for the first time filed a petition on 08.08.2007 that Paras Nath Singh, defendant no. 1, got three daughters, who are necessary party to the suit and so they may also be impleaded in the suit, but, Paras Nath Singh, defendant no. 1, denied to have three daughters and on such the petition, for impleading three daughters of Paras Nath Singh, filed by the plaintiff was dismissed on 06.04.2010. The plaintiff, again, filed petition on 28.10.2010 alleging therein that Paras Nath Singh got three daughters and they be also impleaded as defendants. But, the same petition was also dismissed on 11.02.2011 holding that Paras Nath Singh got no daughters. Thereafter, the plaintiff, again, filed a petition under Order 6 Rule 17 of the Civil Procedure Code on 15.04.2011 for



amendment of the plaint and for impleading the so called three daughters of Paras Nath Singh that each daughter got 1/6th share, but, the petition, dated 15.04.2011, was also dismissed on 02.06.2012. Thereafter, the plaintiff, again, filed petition on 05.10.2015 under Order 22 Rule 4 of the Civil Procedure Code and the same was dismissed by order, impugned.

The issue has already been decided by the Court by three successive orders that Paras Nath Singh had no daughters, therefore, I do not find any substance that the Court should have held enquiry under Order 22 Rule 5 of the Civil Procedure Code before dismissing the petition of substitution of three daughters of Paras Nath Singh.

Accordingly, this civil miscellaneous petition is **dismissed**.

(Prabhat Kumar Jha, J)

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