

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.946 of 2016

=====

1. Kushi Devi, widow of Late Munna Pandit
2. Sanjay Pandit
3. Bhantan @ Ashok Kumar Both sons of Late Munna Pandit
4. Mamta Devi, daughter of Late Munna Pandit, All resident of Mohalla- North Mandiri, under Budha Colony, Police Station, Town and District of Patna.

.... Petitioner/s

Versus

1. Neelam Devi, wife of Late Lala Rai
2. Gautam Rajesh
3. Kumat Roy Both sons of Late Lala Rai
4. Soni Devi
5. Dolly
6. Isha
7. Sheweta All daughters of Late Lala Rai All resident of Mohalla- North Mandiri, Nanshghat under Budha Colony, Police Station, Town and District of Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Braj Nandan Singh
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

8 21-03-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 16.04.2015 passed in Title Suit No.257 of 1992 by which the petition of the petitioners filed under Order I Rule 10(2) read with Section 151 C.P.C. has been rejected.

The petitioners are legal heirs of defendant No.2 in the suit filed by the plaintiff-respondent Nos.1 to 7 for declaration of title and recovery of possession. During the pendency of the suit,



defendant No.2 died and thereafter the plaintiff filed the petition to delete the name of defendant No.2 as he had already handed over the possession to the plaintiff before his death and left the place after demolishing Chhaparhut. When the petitioners came to know about the deletion of the name of Munna Pandit, the petitioners filed petition under Order I rule 10(2) but the learned Sub Judge rejected the petition of the petitioners on the ground that the petitioners shall intentionally cause delay in disposal of the case.

Learned counsel for the petitioners submits that the petitioners are legal heirs of Munna Pandit and they are in possession of the disputed land. They have got right to contest the suit even after death of Munna Pandit but on the other hand, Mr. J.K.Verma, learned counsel for the respondents submits that the plaintiffs are the dominus litigis and it is the choice of the plaintiff to choose defendant. No doubt, it is the plaintiff who has to choose the defendant according to the relief sought for by the plaintiff but in the present case, Munna Pandit was defendant No.2 in the suit. The plaintiff filed the suit for recovery of possession from Munna Pandit but after his death, the plaintiff filed petition for deletion of name of defendant No.2 on the ground that before death, Munna Pandit had delivered the possession to the plaintiff. Therefore, I find that the legal heirs of Munna Pandit have got right to defend



the suit and the court on the facts of the case has committed jurisdictional error by dismissing the petition of the petitioners.

Accordingly, this civil miscellaneous petition is allowed. The order dated 16.04.2015 is set aside. The petitioners are directed to be impleaded as defendants.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

