

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.172 of 2017

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1. Rishi Raj, Son of Late Shyambabu Prasad, Resident of Kesariya Bazar,
P.O. & P.S. Kesariya, District- East Champaran.

.... Appellant/s

Versus

1. Rajneesh Kumar Pathak, Son of Dinesh Pathak, Resident of Kesariya,
Tola, Chainpur, P.O. & P.S. Kesariya, District- East Champaran.
2. Ranjan Kumar, Son of Late Rambabu Prasad, Resident of Village-
Kesariya Bazar, P.O. & P.S. Kesariya, District- East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Uday Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 23-02-2018

Heard both sides.

The petitioner has filed this petition against the order dated 02.12.2016 passed in Title Suit No. 702 of 2015 (Annexure P-4).

The plaintiff/deceased Rukmani Devi had filed Title Suit No. 702 of 2015 for setting aside the sale deed executed by the defendant no. 2 in favour of defendant no. 1 which is illegal and inoperative on account of lack of title in the executant of the sale deed on the ground that the lands sold by defendant no. 2 fell in the share of Rukmani Devi, the plaintiff (now deceased). The petitioner filed a petition on 02.01.2016 under Order 22 Rule 10 to transpose him as plaintiff in place of deceased Rukmani Devi, who



died on 29.09.2015. The court below allowed the petition of the petitioner vide order dated 31.03.2016 to substitute the name of the petitioner in place of Rukmani Devi, the plaintiff (now deceased), but the petitioner again filed a petition under Order 22 Rule 3 of the C.P.C. for expunging the name of the deceased Rukmani Devi, although her name had already been expunged from the case of the title suit vide order dated 31.03.2016, but the learned court below rejected the petition of the petitioner for expunging the name of Rukmani Devi, Plaintiff/deceased and directed the legal heirs of the Plaintiff/deceased to be substituted vide order dated 02.12.2016.

Learned counsel for the petitioner submits that the petition filed by the petitioner on 24.06.2016 under Order 22 Rule 3 itself is misconceived. Since, once the name of the plaintiff/deceased has been expunged, there is no need of filing any petition to expunge her name, but the court has got no business to substitute the legal heirs of the plaintiff/deceased on his own, if the plaintiff dies and no right to sue survives, then the suit shall abate, but the petitioner has already been substituted to sue the case since the plaintiff, now deceased, during the pendency of the suit gifted her entire property to the petitioner as legal heir. Therefore, the legal heirs of original plaintiff Rukmani Devi, now



deceased, are not required to be substituted.

Considering the facts aforesaid, I find that the learned Sub- Judge has committed illegality while passing order to substitute the name of the plaintiff Rukmani Devi on her death. Although, the name of Rukmani Devi had already been expunged vide order dated 31.03.2016 and *suo motu* order for substitution of legal heirs is illegal.

Accordingly, the order dated 02.12.2016 is set aside and the present Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J.)

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