

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1257 of 2017

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1. Jugal Kishore Gupta, S/o Late Kamla Prasad, resident of Mohalla-
Kazichak, Panna Mill Road, P.S.- Mojahidpur, District- Bhagalpur.

.... Petitioner/s

Versus

1. Shiv Priya @ Sintu, S/o Late Tribhuwan Prasad, resident of Mohalla-
Khalifabagh, Burhanath Road, P.S.- Kotwali, District- Bhagalpur, at present
R/o Goushala Road, Naugachia, P.S.- Naugachia, District- Bhagalpur.
2. Sunil Kumar Singh, S/o Late Siyaram Singh, R/o Mohalla-
Mohaddinagar, P.S.- Mojahidpur, District- Bhagalpur.
3. Gopal Prasad Gupta, S/o Late Kamla Prasad Gupta.
4. Nawal Kishore Gupta, S/o Late Kamla Prasad Gupta.
5. Abadh Kishore Gupta, S/o Late Kamla Prasad Gupta.
6. Raj Kishore Gupta, S/o Late Kamla Prasad Gupta. All 3 to 6 resident of
Mohalla- Kajichak, P.O. + P.S.- Mojahidpur, District- Bhagalpur.
7. Smt. Shakuntala Devi, W/o Sri Pramanand Gupta, R/o Panna Mill Road,
P.O. & P.S.- Mojahidpur, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Anshuman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 05-03-2018 Heard both sides.

The petitioner being aggrieved filed this civil
miscellaneous petition against the order dated 07.03.2017 passed
in Title Appeal No.126 of 2005.

The appellant filed Title Appeal No.126 of 2005. The
aforesaid title appeal was allowed vide judgment and decree dated
06.01.2016. The appellant filed petition to delete the name of
appellant No.4, Nand Kishore Gupta who died during the
pendency of the appeal but the learned 3rd Additional District



Judge, Bhagalpur rejected the petition of the petitioner on the ground that the title appeal has already been allowed and other side have filed Second Appeal No.67 of 2016 in the High Court of Patna. Therefore, the petition should have been filed for deletion of name of appellant No.4 in the Second Appeal itself.

It appears that the appellate court was not seisin of the appeal. The appellate court has already decided the appeal on 06.01.2016. During the pendency of the appeal, respondents filed petition for abatement of appeal on the ground of death of appellant No.4 and non-substitution of his legal heirs in his place but the appellate court vide order dated 24.07.2010 rejected the petition of abatement holding that the deceased appellant was properly represented by other appellants. The respondent filed CWJC No.16072 of 2010 and this Court vide order dated 18.05.2011 dismissed the writ petition finding no merit but due to inadvertence, the name of appellant No.4 remained in the cause title and the same was also mentioned in the judgment and decree passed by the appellate court.

Therefore, I find that the appellants should have filed petition in the Second Appeal No.67 of 2016 pending in this Court, if at all desired for deletion of the name of Nand Kishore Gupta in the judgment and decree passed by the appellate court.



Accordingly, as prayed for by the learned counsel for the petitioner, this civil miscellaneous petition is permitted to be withdrawn with liberty to the petitioner to file petition, if so advised, in the Second Appeal.

Thus, this civil miscellaneous petition is disposed of as withdrawn.

(Prabhat Kumar Jha, J)

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