

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.599 of 2016

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1. Jhabru Sah Son of late Chaitu Sah
2. Pradeep Sah Son of Late Chaitu Sah Both Resident of Village- Karlikha, P.S Karandighi, District West Dinajpur (West Bengal).

.... Appellant/s

Versus

1. Mohan Lal Sah Son of late Jitu Lal Sah Resident of Village- Amour, P.S. Amour District Purnea.
2. Bhagwati Devi Wife of Late Hari Mohan Singh
3. Rina Devi Daughter of late Prabhat Narayan Singh
4. Bunti Rani Daughter of late Prabhat Narayan Singh
5. Bikram Kumar Son of late Prabhat Narayan Singh
6. Bipul Kumar(Minor) Son of late Prabhat Narayan Singh through Guardian and Next Friend Bimal Kumar, All Resident of Village - Baluganj, P.O Machhata, P.S. Amour District Purnea.
7. Sachchidanand Singh Son of late Hari Mohan Singh
8. Murlidhar Singh Son of late Hari Mohan Singh
9. Jai Mangal Singh Son of late Hari Mohan Singh
10. Manoj Kumar Singh Son of late Hari Mohan Singh
11. Most. Amola Devi Wife of late Surendra Singh
12. Bharti Devi Daughter of late Surendra Singh
13. Shambhu Prasad Singh Son of late Jahuri Singh All Resident of Village- Baluganj, P.S. Amour, District Purnea.
14. Vijay Prasad Sah Son of late Parwati Devi (Daughter of late Hari Mohan Singh)
15. Rina Devi Daughter of late Parwati Devi
16. Nitu Devi Daughter of late Parwati Devi
17. Lakhi Kumari Daughter of late Parwati Devi
18. Doma Sah Husband of late Parwati Devi All Resident of Churipatti Kishanganj, P.S. Kishanganj, District Kishanganj.
19. Simla Devi Daughter of late Hari Mohan Singh Resident of Village- Kasba, P.S Kasba, District Purnea.
20. Pato Devi Wife of Kamleshari Prasad Sah, Daughter of Late Jahuri Singh Resident of Village- Gyandove, P.S Amour, District Purnea
21. Tukni Devi Wife of Vijay Prasad Sah, Daughter of late Jahuri Singh Resident of Village - Gulab Bagh, P.S Sadar District Purnea.
22. Binay Sah Son of late Ram Mohan Singh
23. Uday Sah Son of late Mohan Singh
24. Musai Lal Son of late Ram Mohan Singh
25. Sundar Lal Singh Son of late Chhatahru lal Singh
26. Domai Lal Singh @ Krishna Mohan Singh son of late Chhuthru Lal Singh
27. Sumin Debi wife of Shib Lal@Amar Lal Sah, Daughter of late Chhatahru Lal Singh
28. Jai Lal Singh Son of late Jiban Singh(Sah)
29. Nirmal Lal Sah Son of late Jiban Lal Singh(Sah)
30. Dinesh Lal Sah Son of late Jiban Lal Singh(Sah)
31. Most. Mahajani Debi Widow of Jiban Lal Singh(Sah)
32. Shiv Narayan Sah Son of Late Manroo Singh
33. Ramesh Pd. Sah Son of late Gangadhar Prasad Sah



34. Umesh Pd. Sah Son of late Gangadhar Prasad Sah All Resident of Village- Baluganj, P.S. Amour, District Purnea.

35. Md. Bahrudin son of late Ajimuddin

36. Razia Khatoon Wife of Md. Bahrudin Resident of Bahadurpur, P.S. Amour, District Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amish Kumar

For the Respondent 2 to 13 : M/s Nadimul Hasan & Prena Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

5 31-01-2018

Heard both sides.

The petitioners have filed this petition against the order dated 17.06.2016 passed by learned Sub-Judge in Title Suit No. 305 of 1999.

The petitioners are sons of Putli Devi, defendant No.2. Putli Devi was daughter of Jitu Lal Sah. Mohan Lal Sah and Putli Devi, son and daughter of Jitu Lal Sah, filed Title Suit No. 305 of 1999 for partition by metes and bounds of the properties mentioned in the schedule of the plaint and to carve out 2/3rd share in land mentioned in schedule A and 1/3rd share in land mentioned in schedule-B & C of the plaint. During the pendency of the suit Putli Devi died but due to inadvertence Mohan Lal Sah, brother of Putli Devi, did not file any petition for substitution of her legal heirs and the petition for substitution was filed on 15.03.2016 but the learned Sub-Judge rejected the petition on the ground of limitation although a petition for condoning the delay was also filed. Thereafter, the petitioners, who are sons of Putli Devi and her legal heirs, filed a petition under order I Rule 10 of the C.P.C. on 20.05.2016 but the learned Sub-Judge rejected the petition on 17.06.2016.

Mr. Amish Kumar, the learned counsel for the



petitioners, submits that admittedly petitioners are sons and legal heirs of Putli Devi. Putli Devi died during the pendency of the suit. The mother of petitioners filed title suit for partition of the property and if the petitioners are not allowed to contest the suit they would suffer irreparable loss and injustice would cause to them. The learned counsel for the petitioners submits that even if petition under Order 22 Rule 4 of the C.P.C. was dismissed the petition by the legal heirs under Order I Rule 10 of the C.P.C. cannot be dismissed on this ground alone. The learned counsel for the petitioner has placed reliance on the judgement of the Supreme Court reported in **2017 (4) PLJR 181 (Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadia & Ors)**.

Mr. Nadimul Hasan, the learned counsel for the respondents Nos. 2 to 13, submitted that petitioners being legal heirs of Putli Devi filed the petition to be impleaded as plaintiff after more than five years from the date of death of their mother.

Admittedly, Putli Devi and her brother Mohal Lal Sah filed the title suit for partition but, due to ignorance, after death of Putli Devi, neither Mohal Lal Sah nor the legal heirs of Putli Devi filed any petition for substitution of legal heirs of Putli Devi. When this fact came to knowledge of the learned counsel appearing on behalf of the plaintiff on the date of deposition of plaintiff/ Mohan Lal Das, a petition under Order 22 Rule 3 read with Rule 9 (2) of the C.P.C. was filed but the learned Sub-Judge rejected the petition on the ground that the same is barred by limitation. Again the petitioners filed a petition under Order 1 Rule 10 of the C.P.C. to be impleaded as plaintiff, as they are necessary party in partition suit, and they inherited the property left out by their mother but the same was also rejected.

It appears that the petitioners are necessary party and



if they are not made party in the suit, no substantial justice can be done. The courts are meant to do substantial justice between the parties and technical rules or procedures are not given precedence over doing substantial justice. Therefore, I find that the learned Sub-Judge has committed jurisdictional error by rejecting the petition of petitioners to implead them as plaintiff in the suit.

Accordingly, the order dated 17.06.2016 passed in Title Suit No. 305 of 1999 is set aside. The petitioners are directed to be impleaded as plaintiff in the suit in place of their mother. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

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