

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11858 of 2014

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Most. Shiv Kumari Devi Daughter of Badar Rai, Resident of village-
Harnehiya, Telppa Sathi, Police Station- Shikarpur, District- West
Champaran

.... Petitioner

Versus

1. Ramawtar Rai son of Bhim Ray Resident of village- Chak
Belsandi Police Station- Gaunaha, Tappa Jamhauri, District- West
Champaran
2. Sk. Asin
3. Sheikh Yusuf
4. Sheikh Salami Both son of Md. Sadique @ Shahid All resident of
village- Phulwaria, P.O. Rakhahi Tappa Ramgir, Pragana- Majhaua,
Police Station- Shikarpur, District- West Champaran
5. Bibi Hasnata Raj daughter of Md. Sadique @ Shahid wife of Sk. Ali
Hassan Resident of village- Sakhulahi, P.O. Gokhula, Tappa
Ramgir, P.S. Mainatand, Pragana Majhaua, District- West
Champaran
6. Most. Hasnadina wife of Md. Sadique @ Shahid Resident of village-
Phulwaria, P.O. Rakhahi, Police Station- Sheikhpur Tappa Ramgir,
P.S. Shikarpur Pragana Majhaua, District- West Champaran
7. Mangani Mahto
8. Lalan Mahto
9. Kishun Mahto All son of Bhola Mahato All resident of village-
Salahuwania, P.O. Rakhahi, Police Station- Shikarpur Tappa Ramgir
Pragana Majhaua, District- West Champaran
10. Md. Ishaque son of Sk. Mela, Resident of village- Phulwaria,
Pragana Majhaua, Police Station- Sheikhpur, Tappa Ramgir, District-
West Champaran
11. Kanhaya Prasad son of Inardeo Prasad, Resident of village-
Dharampur, P.O.- Sathi Tappa Sathi, Pragana Mathua, District-
West Champaran
12. Ramji Rai son of Late Barhu Rai Resident of village- Sakhuawania,
P.O. Rakhahi, Tappa Ramgir, P.S.- Shikarpur, Pragana, Mathua,
District- West Champaran

.... Respondents

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Appearance :

For the Petitioner : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Anand Kishore Choudhary,

Advocate

For the Respondent No.12 : Mr. Sanjay Kumar No.7, Advocate
Mr. Anant Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 08-03-2018

This application has been filed by the decree holder of

Execution Case No.01 of 1997 for setting aside the order dated



14.03.2014 passed by Sub Judge, Bettiah, West Champaran whereby and whereunder the learned Sub Judge impleaded the respondent no.12 as party to the execution case.

2. Heard learned counsels for the petitioner and the respondents.

3. The petitioner filed a Title Suit No.18 of 1986 against Ram Autar Rai and others. In the said suit, the defendant nos.12 to 15 appeared and filed written statement. They admitted the claim of plaintiff and denied any manner of concern with respect to the suit property. The remaining defendants did not appear and the suit was decreed ex-parte holding that the plaintiff was entitled to possession over the land in question. The intervenor respondent no.12 is one of the son of Barhu Rai who was defendant no.15 in Title Suit No.18 of 1986. The respondent no.12 claims right title and possession over the land which is under the execution proceeding. The learned counsel for the petitioner submits that the father of intervenor (respondent no.12) had filed written statement and admitted the claim of the plaintiff and so he is estopped from claiming his own title.

4. The learned counsel for the respondents on the other hand submits that the defendant no.15 Barhu Rai who was father of the intervenor respondent died during the pendency of the suit and on account of his death, the plaintiff did not take step for



substitution. The suit was decreed against the dead persons. This intervenor claims his own right over the land in question and he being the legal heir is entitled to be substituted. Learned counsel further submits that the decree passed against the dead person is nullity and it cannot be executed against a dead person.

5. Be that as it may. The petitioner admittedly is son of Barhu Rai who was defendant no.15 in Title Suit No.18 of 1986. The father of the intervenor was not substituted and he remained on record even after his death. The decree was accordingly passed against dead person. In the present execution case, the deceased father of intervenor is still on record. The intervenor respondent no.12 claims to be in possession over the land in question. He being the legal heir filed the petition which was allowed and he was impleaded as party to the execution case. Thus, I find that the court below has not committed any jurisdictional error in impleading the intervenor-respondent who is none else than the son of the defendant no.15 (i.e., the deceased judgment debtor).

6. In the aforesaid facts and circumstances, this application is dismissed.

(Sanjay Kumar, J)

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