

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16271 of 2010

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Most. Reshmi Devi @ Rashmi Devi W/O Late Sheo Dhyan Ram R/O Vill.-
Chitrasenpur, P.S.- Ara Moffasil, Post- Daulatpur, Distt.- Bhojpur, At
Present Residing At C/O Barhu Prasad Mistry, Mohalla- Chaturbhujpur,
House No. 182, Post- Mughalsarai, P.S.- Mughalsarai, Distt.- Chandauli
(U.P.)

.... Petitioner

Versus

1. The State Of Bihar through its Collector, Bhojpur (Arrah)
2. Satendra Kumar S/O Late Sheo Dhyan Ram At Present Residing At
Mohalla- Mirganj, P.O.- Arrah, P.S.- Ara Nagar, Distt.- Bhojpur
3. Ram Swari Devi W/O Late Sheo Dhyan Ram At Present Residing At
Mohalla- Mirganj, P.O.- Arrah, P.S.- Ara Nagar, Distt.- Bhojpur
4. Surendra Kumar S/O Late Sheo Dhyan Ram At Present Residing C/O
Barhu Prasad Mistry, Mohalla- Chaturbhujpur, House No. 182, Post-
Mughalsarai, P.S.- Mughalsarai, Distt.- Chandauli (U.P.)
5. Abinash Kumar S/O Late Kariman Ram R/O Vill.- Chitrasen, P.S.-
Arrah, Muffasil, Post- Daulatpur, Distt.- Bhojpur
6. Yadubanshi Ram S/O Late Nandlal Ram R/O Vill.- Chitrasen, P.S.-
Arrah, Muffasil, Post- Daulatpur, Distt.- Bhojpur
7. Raghubar Dayal Ram S/O Late Nandlal Ram R/O Vill.- Chitrasen, P.S.-
Arrah, Muffasil, Post- Daulatpur, Distt.- Bhojpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Dharmendra Kr.Sinha, Advocate
For the Respondent No.1 : Mr. Harish Kumar, GP-8
For the Respondent no.3 : Mr. Surendra Mishra, Advocate
For the Respondent no.2 : Mr. Nitya Nand Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 06-02-2018 This application has been filed for setting aside the order

dated 05.06.2010 passed by Sub Judge-I, Ara, Bhojpur in Title

Suit (Final Decree) No.372 of 2004 whereby and whereunder the

petition of the petitioner for impleading her as party to the final

decree was rejected.

2. Heard both sides.

3. It appears that the partition suit filed by the husband
of petitioner was decreed as per judgment dated 29.04.2005. After



disposal of the suit, the husband of petitioner died. In course of final decree proceeding a petition under Order 1 Rule 10(2) of the CPC was filed on 02.08.2005 on behalf of Surendra Kumar claiming to be son of original plaintiff. It has been asserted that the said petitioner Surendra Kumar was living separately and so he had no knowledge about the pendency of the suit. The prayer to implead the said Surednra Kumar was allowed and he was impleaded as party to the said final decree proceeding. The said Surendra Kumar and mother Reshmi Devi filed a petition on 19.02.2010 praying therein to transpose Surendra Kumar as plaintiff to the suit. The prayer for transposing was rejected. The petitioner has filed this application for quashing the said order.

4. The learned counsel for the petitioner submits that the petitioner is legally wedded wife of original plaintiff Shivdhyam Ram. The said Shivdhyam Ram was in railway service and in the pension paper the name of the petitioner stands mentioned. The petitioner has interest in the suit property left by her husband and so she is necessary party to the final decree. The learned counsel for the respondent on the other hand submits that the petitioner is not the heir of deceased Shivdhyam Ram. The respondent no.3 Ram Swari Devi is the legally married wife of the deceased Shivdhyam Ram and from the said wed-lock, the respondent no.2 Satendra Kumar born. The petitioner being not the heir of Shivdhyam Ram is not necessary party to the final decree. If the



petitioner wants any share in the suit property she will have to produce cogent evidence. The matter has already been adjudicated by the court below. The right and interest of petitioner cannot be adjudicated in final decree and so she is not necessary party to the final decree and this application is fit to be dismissed.

5. On perusal of impugned order dated 26.09.2006, it appears that the court below impleaded Satyendra Kumar in presence of this petitioner and her son. This petitioner and his son was also heard by the court below as they had filed intervenor petition. The respondent nos.3 and 4 were transposed in the category of plaintiffs as per order dated 04.04.2009. These two orders have not been challenged by the petitioner or her son. The petitioner has again raised the same question and wants to implead herself as party to the final decree proceeding.

6. In view of the above discussions made above, I find that the court below has not committed any jurisdictional error in rejecting the prayer of the petitioner as per impugned order.

7. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

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