

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1180 of 2016

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1. Indu Kumari @ Indu Singh, Daughter of Late Dinesh Prasad Singh, Resident of Village- Karisath, P.S.- Udwant Nagar, District- Bhojpur (Bihar) at present residing at West Tola Ara, P.s.- Ara Nagar, District- Bhojpur (Bihar).

.... Appellant/s

Versus

1. Hirajhari Devi, wife of Late Chhathu Singh,
2. Ajit Singh, Son of Late Chhathu Singh,
3. Amarjit Singh, Son of Late Chhathu Singh,
4. Ranjit Singh, Son of Late Chhathu Singh,
5. Dhanjit Singh, Son of Late Chhathu Singh,
6. Sarbjit Singh, Son of Late Chhathu Singh,
7. Sri Bhagwan Singh, Son of Late Chhathu Singh, All resident of Village- Karsiath, P.S.- Udwant Nagar, District- Bhojpur (Bihar).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar
For the Respondent/s : Mr. Sachidanand Singh
For the intervenor : Mr. Alok Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

6 16-02-2018

I. A. No. 1272 of 2017

This interlocutory application has been filed for addition of intervenor, Ramesh Singh, as respondent in the Civil Misc. petition.

I. A. No. 1272 of 2017 is allowed and intervenor Ramesh Singh is directed to be impleaded as respondent in the present Civil Misc. petition.

Heard the learned counsel for the petitioner, the learned counsel for the respondents and the learned counsel for the intervenor.

The petitioner is aggrieved by the order dated 01.07.2016 passed by learned Sub-Judge-IX, Bhojpur at Ara in



Title Suit No. 495 of 2003 by which the petition of the petitioner to substitute her, after death of her father, Dinesh Singh, as defendant in the suit, has been dismissed.

The learned counsel for the petitioner submits that after death of father of the petitioner the plaintiff filed a petition in the suit to expunge the name of his father, Dinesh Singh. When the petitioner came to know about this fact she filed a petition with documents showing that she is sole daughter of Dinesh Singh but the learned Sub-Judge rejected the petition without holding any enquiry under Rule V of Order 22.

The learned counsel for the respondents submits that the court has discussed the entire documents and held that the documents filed by the petitioner are not enough to show that she is daughter of Dinesh Singh.

Rule V of Order 22 says that where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased respondent, such question shall be determined by the court. It appears from bare perusal of Rule V of Order 22 that whenever a question arises before any court about a person whether he or she is legal representative of a plaintiff or defendant the court is legally bound to decide the question first in accordance with law. It appears from the records that both sides filed different documents for determination on which the court came to a conclusion that the documents filed by the petitioner do not appear to be strong enough to suggest that petitioner is daughter of Dinesh Singh.

I find that such question should have been decided first by allowing both sides to adduce evidence. The finding of the learned Sub-Judge that the documents do not appear to be strong



enough to hold the petitioner daughter of Late Dinesh Singh. This finding of the court below is erroneous and illegal. The court has to record a definite finding on question whether she is legal heir of Dinesh Singh. Accordingly, the order dated 01.07.2016 passed in Title Suit No. 495 of 2003 is set aside and the matter is remitted to the court below to decide the question afresh in accordance with law.

This Civil Misc. petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

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