

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19271 of 2011

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1. Jago Sahani @ Gango Sahani Son of Chhabu Sahani, resident of village - Sanhauli, P.S. - Khagaria, District - Khagaria
 2. Ashok Sahani Son of Chhabu Sahani, resident of village - Sanhauli, P.S. - Khagaria, District – Khagaria.

.... Petitioner/s

Versus

1. Inchan Devi Wife of Late Dhanik Sahani, Resident Of Mohalla - Baluahi, P.S. & District - Khagaria
2. Ram Pravesh Sahani Son of Dhanik Sahani, Resident Of Mohalla - Baluahi, P.S. & District - Khagaria
3. Bijay Sahani Son of Dhanik Sahani, Resident Of Mohalla - Baluahi, P.S. & District - Khagaria
4. Pramila Devi Wife of Sanjay Kumar Mahton. S/O Bishwanath Prasad Mahto Resident Of Village - Bhadash, P.S. & District - Khagaria
5. Chhabu Sahani Son of Jagarnath Sahani, Resident Of Village - Sanhauli, P.S.- Khagaria, District - Khagaria
6. Om Prakash Sahani Son of Late Dhanik Sahani, Resident Of Mohalla - Baluahi, P.S. & District – Khagaria,

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Adv.

For the Respondent/s : M/s Rakesh Chandra and Brajnandan Tiwary, Advs..

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-10-2018

Petitioners have filed this writ application for setting aside the order dated 11.08.2011 passed by Sub-Judge-I, Khagaria in Title Suit No. 20 of 1999 whereby and whereunder prayer of legal heirs of deceased plaintiff was allowed and they were substituted in place of sole plaintiff.

2. Heard learned counsels for the petitioner as well as the respondents and perused the record.

3. It appears that during the pending of suit the sole



plaintiff died leaving behind the respondent 1st party. The respondent 1st party filed a petition under Order XXII Rule 4 of Code of Civil Procedure on 12.09.2005 for substituting them in place of plaintiff.

4. It has been submitted that the original plaintiff, who was husband of respondent no. 1 and father of respondent no. 2 and 3, became traceless for which an informatory petition was filed before the Officer Incharge of Khagaria Police Station on 22.02.2002. The plaintiff did not return back till 12.01.2004 and so a petition for substitution was filed. The wife of plaintiff filed an affidavit on 28.05.2004 stating therein that her husband died and so the heirs be substituted in place of plaintiff.

5. The learned court below considering two versions of the legal heirs of sole plaintiff allowed them to be substituted in place of plaintiff. The objection of the respondents is that on two different occasions, the legal heirs of deceased plaintiff have given contradictory statement. At the earlier stage, they have stated that the plaintiff is traceless and subsequently they changed their version and have stated that the plaintiff has died. The learned court below considering the eagerness of the heirs of plaintiff to proceed with the case and the fact that the plaintiff remained traceless for several years, has rightly substituted the heirs of plaintiff after condoning the delay in filing substitution petition. The court below has not committed any



jurisdictional error in allowing the substitution petition.

6. In view of above facts, I find that this application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

