

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.726 of 2016

In
Second Appeal No.673 of 1986

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1. Musahru Sahu @ Bhagwat Sahu S/o Late Hardeo Sahu
 2. Ramu Sahu S/o Late Ram Bhaju Sahu Both 1 & 2 R/o vill. - Salempur Titu (Gaura Maruf) Moh. - Neyamat Pur, P.S. Teghra, Distt. - Begusarai
 3. Raj Kumari Devi W/o Ram Balam Sahu resident of village - Aunta, P.S. Hathidah, Distt. - Patna
 4. Nilam Devi W/o Suresh Sahu R/o vill. - Chorher, P.S. Naugacchia, Distt. - Bhagalpur

... .. Petitioner/s

Versus

1. Shankar Singh
2. Kankar Singh both sons of Late Gopi Singh
3. Baleshwar Singh Son of Late Siya Ram Singh All residents of village - Bajalpura, P.S. Teghara, Distt. - Begusarai
4. Tara Devi Wife of Shiv Balak Singh resident of village & P.S. Bacchwara, Distt. - Begusarai
5. Indradeo Prasad Singh
6. Balram Prasad Singh
7. Ram Narayan Prasad Singh
8. Bijay Prasad Singh All sons of Late Chandrika Prasad Singh residents of village - Rajaura @ Baro, P.S. Barauni, Distt. - Begusarai
9. Radha Devi Wife of Chaturbhuj Prasad Singh resident of village - Sen, P.S. Alamganj, Town and District - Patna
10. Saro Devi Wife of Late name not Known (daughter of Late Chandrika Prasad Singh resident of village Rajaura @ Baro, Tola Bhithapar, P.S. Barauni, Distt. - Begusarai
11. Manju Devi Wife of Ram Bahadur Singh resident of village - Gangapur, P.S. Tajpur, District - Samastipur
12. Kushar Sahu S/o Hirday Sahu R/o Village - Salempur Titu (Gaura Maruf), Mohalla - Neyamatpur, P.S. Tegha, Distt. - Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Waliur Rahman
For the Respondent/s : Mr. Amit Narayan

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 13-09-2018

Reg:- **I.A. No.8200 of 2016**

This application has been filed for substitution of



deceased Opposite party No.3, who died during the pendency of S.A. No. 673 of 1986 on 15.01.2013, leaving behind his heirs and legal representatives as described in paragraph 2 of the application. It has been stated that the petitioners learnt about the death of Opposite party No.3 during the pendency of the present restoration application, when notices were sent after counter affidavit was filed on behalf of the contesting respondents in the present case.

Considering the facts and circumstances, I.A. No. 8200/2016 is allowed. Let the name of Opposite party No.3 be expunged from the cause title of this application and in his place names of his heirs and legal representatives as described in paragraph 2 of the application be substituted.

It is stated that the legal representatives of Opposite party no.3, proposed to be substituted has already entered appearance by way of Vaklatnama.

Reg:- I.A. No. 8199 of 2016

This application has been filed for exempting the petitioners from the necessity of substitution of the heirs and legal representatives of deceased Opposite party Nos. 4,5,6 and 9, who were defendants second sets in the Court below and died in the year, 1996, 1994, 1995 and 2000, respectively. It has



been stated that the said opposite parties had neither filed any written statement nor had contested the suit.

Considering the averments made in I.A. No.8199 of 2016, the same is allowed at the petitioners' risk. Let the names of the said deceased Opposite party Nos. 4,5,6 and 9 be deleted from the cause title of this application.

This application has been filed for restoration of S.A. No. 673 of 1986, which stood dismissed for default as against respondent No.9 and, therefore, held incompetent by order dated 09.09.2015 passed in the said case.

On perusal of the record, it transpires that second appeal stood dismissed for default for non-compliance of the peremptory order dated 02.02.2015. The said peremptory order dated 02.02.2015 has subsequently been complied with as stated in paragraph 8 of the application inasmuch as appeal notice has been filed as against respondent No.9.

On perusal of the application for restoration, I find that the petitioners have been able to make out a case for restoration.

This application is, accordingly, allowed. Let said S.A. No. 673 of 1986 be treated to have been restored as against respondent no.9. The order dated 09.09.2015 accordingly,



stands recalled.

(Chakradhari Sharan Singh, J)

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