

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.559 of 2017

Pramod Kumar Gupta, son of Late Dwarka Sah, Resident of Mohalla-
Hathsarganj, P.S.- Hajipur, District- Vaishali.

... .. Appellant/s

Versus

1. Abhishek Kumar, son of Late Hari Narain Gupta,
2. Meena Gupta, wife of Hari Narain Gupta,
3. Kumari Maisha, daughter of Late Hari Narain Gupta,
4. Neetu Kumari, daughter of Late Hari Narain Gupta,
5. Amod Kumar Gupra, son of Late Dwarka Sah,
6. Radha Devi, daughter of Late Dwarka Sah,
7. Rajkumari Devi, daughter of Late Dwarka Sah, All resident of Mohalla-
Hathsarganj, P.S.- Hajipur, District- Vaishali.
8. Savitri Devi, wife of Ram Prasad Sah,
9. Kanta Devi, wife of Jawaharlal Sah,
10. Gayatri Devi, wife of Bhola Sah,
11. Geeta Devi, wife of Ganga Nayak, All resident of Village- Lalganj, P.S.-
Lalganj, District- Vaishali.
12. Badri Gupta, son of Jainarain Gupta,
13. Savita Gupta, wife of Late Kedarnath Gupta,
14. Navin Kumar, son of Late Kedarnath Gupta,
15. Reena Gupta, daughter of Late Kedarnath Gupta,
16. Ravindra Kumar Gupta, son of Late Shivnandan Gupta,
17. Panchnand Gupta, son of Late Shivnandan Gupta,
18. Madan Gupta, son of Late Shivnandan Gupta,
19. Praveen Kumar Gupta, son of Late Ashok Kumar Gupta,
20. Manish Kumar Gupta, son of Late Ashok Kumar Gupta,
21. Geeta Devi, wife of Late Ashok Kumar Gupta,
22. Rashmi, daughter of Late Ashok Kumar Gupta.
23. Maneka Kumari, daughter of Late Ashok Kumar Gupta,
24. Pushpa Devi, wife of Late Suresh Purbe and daughter of Late Shivnandan
Gupta,
25. Vijaylakshmi Devi, wife of Late Mohan Prasad Sah and daughter of Late
Shivnandan Gupta,
26. Arun Kumar, son of Late Satya Narain Gupta,
27. Suresh Kumar Gupta, son of Late Satya Narain Gupta,
28. Leelavati Devi, wife of Late Satya Narain Gupta,
29. Nand Kishore Gupta, son of Late Rajendra Prasad Gupta,
30. Vinod Kumar Gupta, son of Late Rajendra Prasad Gupta,
31. Sanjay Kumar Gupta, son of Late Rajendra Prasad Gupta, All resident of
Mohalla- Hathsarganj, P.S.- Hajipur, District- Vaishali.
32. Lalit Raut, son of Late Lakshmi Raut,
33. Shalu, daughter of Late Lakshmi Raut,
34. Meenakshi, daughter of Late Lakshmi Raut,
35. Sakshi, daughter of Late Lakshmi Raut,
36. Meetu Raut, son of Late Lakshmi Raut, All resident of Mohalla- Raut Patti,
P.S.- Madhubani, District- Madhubani.
37. Ram Shankar Panjiyar, son of Satya Deo Panjiyar,
38. Dharamsheela Devi, daughter of Late Satya Deo Panjiyar,



39. Geeta Devi, daughter of Satya Deo Panjiyar, All resident of Village- Lalganj,
P.S.- Lalganj, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. , Sujeet Kumar Gupta, Mr. Ram Kumar Singh,
Advocate
For the opposite party : Mr. Surendra Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 05-07-2018 Heard both sides.

The petitioner filed Civil Miscellaneous petition against order dated 14.02.2017 in Misc. Case No. 9 of 2002 passed by Sub-Judge Hajipur, Vaishali, by which petition of the petitioner for abatement of Misc. Case No. 9 of 2002 has been dismissed.

Learned counsel for the petitioner submits that in view of the provisions as contained in Section 141 of the CPC which says that the procedure provided in this code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction and submitted the Misc. Case no. 9 of 2002 filed under order 9 of rule 13 is maintainable in the present case. From perusal of the order, it transpired that the learned Sub Judge has relied upon the judgment of this court reported in AIR 1979 PAT 319 Syed Balal Ahsan, Appellant versus Wastana Rubi and others, in which it is clearly held in para 5 of the judgment as follows:



“The question which arises in this case is as to whether the provisions of order 22 in regard to the abatement can be applied to the present case. From the very language used in the different rules of order 22, it is manifest that the question of abatement of a suit arise only if a suit is pending. It is, therefore, futile to suggest that on the death of defendant No.1 on 18.04.1971 when the suit stood disposed of, there could be any question of abatement thereof. No application for substitution of the heirs of the deceased party could have been filed. The provisions of order 22, being applicable only to pending suits cannot be applied to the present case. Besides the effect of restoring the suit after setting aside ex parte decree vis-a-vis all the parties concerned including the heirs of defendant No.1 is to implead them as parties to the suit and by their application dated 24th March, 1973, the plaintiffs were merely getting formal and consequential corrections made in the body of the plaint. If that were not so, it would have to be held as a necessary corollary, that the ex parte decree against defendant No. 1 was never set aside.”

From perusal of the aforesaid judgment, it appears that the provisions of abatement is not applicable in a petition under order 9 rule 13 and the court has rightly dismissed the petition of the petitioner.

I do not find any merit in this Civil Miscellaneous Case. Accordingly, the same is dismissed.



(Prabhat Kumar Jha, J)

khushbu/-

U			
---	--	--	--

