

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18898 of 2014

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1. Vijay Kumar Singh son of Chandradhan Singh, resident of village - Kumhau,
P.S. - Shosagar, District - Rohtas, at present resident of village - Sonhar, P.S. –
Sheosagar, District - Rohtas.
2. Mostt. Raj Kuer wife of Late Sita Ram Ray, resident of village - Sonhar, P.S.
Sheo Sagar, District - Rohtas. Petitioner/s

Versus

1. Satyendra Singh.
2. Baban Singh Both sons of Late Bishambhar Ray
3. Ran Vijay Singh
4. Bijay Bahadur Singh Both sons of Satyendra Singh
5. Bitu Kumar alias Ajit son of Baban Singh
6. Sujit Kumar (Minor) son of Baban Singh under the guardianship of Baban Singh
who is his father and natural guardian, All are residents of Village - Sonhar, P.S. –
Sheosagar, District - Rohtas.
7. Mostt. Raj Kuer wife of Late Rajbansh Singh
8. Urmila Devi D/o Late Rajbansh Singh
9. Deobansh Singh son of Late Vishwanath Ray.
10. Umesh Kumar Singh
11. Dinesh Kumar Singh Sons of Rajbansh Singh, All are residents of Village –
Sonhar, P.S. - Sheosagar, District - Rohtas.
12. Jokhani Devi Daughter of Late Sita Ram Ray, resident of village - Sonhar, P.S.
- Sheosagar, District - Rohtas. At present resident of village - Mati Dihra, P.S. –
Kudra, District - Kaimur. Respondent/s
- =====

Appearance :

For the Petitioner/s : M/s Sudama Singh and Surendra Kr. Mishra, Advs.
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 11-05-2018

This application has been filed by the defendant of Title
(Partition) Suit No. 126 of 2002 pending in the court of Sub-Judge-III,
Sasaram for quashing the order dated 08.07.2014 whereby and
whereunder the court below rejected the petition filed by the
petitioners.

2. Heard learned counsels for the petitioners and the



respondents.

3. The respondents 1st set (plaintiffs) filed the aforesaid suit for partition of land mentioned in schedule-I of the plaint against the petitioners and defendants 2nd and 3rd set. The plaintiffs belonged to one branch and they have claimed 7/16 share in the suit property. During the pendency of the suit, the plaintiff no. 1-Bishambhar Rai died leaving behind two sons and grandsons. The son and grandsons of deceased are already on record as plaintiff nos. 2 to 7. The plaintiff filed a petition on 21.10.2011 for expunging the name of plaintiff no.1 as there was no legal heir except the legal heirs who were on record since before. The defendant nos. 6 to 8 filed rejoinder to the said petition and asserted that the said Bishambhar Rai died leaving behind two daughters also and one of the daughter namely Jokhani has been added as defendant no. 7 describing her to be daughter of Sita Ram Singh and another daughter namely Reshmi Devi, who is married with one Ram Iqwal Singh, has not been impleaded as party to the suit. The plaintiffs deliberately suppressed this fact regarding two daughters are necessary party to the suit. The defendants have therefore prayed for rejection of substitution petition. The court below after hearing both sides allowed the petition filed by the plaintiffs and expunged the name of plaintiff No.1.

4. The learned counsel for the petitioners submit that the



matter of substitution should have been decided only after due enquiry under the provision of Order XXII Rule 5 of Code of Civil Procedure and so the impugned order expunging the name of plaintiff no. 1 is not sustainable and is fit to be set aside.

5. The learned counsel for the respondents on the other hand submitted that the heirs of deceased-plaintiff no. 1 are already on record and so his name has rightly been expunged. Out of alleged two daughters, one is already on record as defendant No. 7. So far alleged 2nd daughter is concerned, the court below having no material *prima facie* establishing about the daughter of plaintiff no. 1, has rejected the petition filed by the defendants. The heirs of Bisambhar Roy will get share in one strip and so the defendants are not prejudiced in any way, even if it is presumed that the deceased has two daughters. The maintainability of suit on account of non-joinder of necessary party may be adjudicated during the trial.

6. In view of foregoing reasons, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18/05/2018
Transmission Date	

