

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1487 of 2016

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1. Most. Kiranlata Devi, wife of Late Raj Kumar Raut,
2. Rakesh Kumar,
3. Manish Ranjan, No. 2 & 3 are sons of Late Raj Kumar Raut, All are resident of Mohalla- Bara Bazar, Ward No.5 Madhubani Town, Police Station- Madhubani, Dist- Madhubani.

.... Appellant/s

Versus

1. Rajeshwari Devi, widow of Late Rajeshwar Thakur, resident of Mohalla- Bara Bazar, Ward No.5 Madhubani Town, Police Station- Madhubani, District- Madhubani.
2. Prayag Chaudhary, son of Late Nathuni Chaudhary, resident of Mohalla- Madhubani Town, Mohalla- Gadiyani Ward No.5, Police Station- Madhubani, Dist- Madhubani.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Prasad

For the Respondent/s : Mr. Baidyanath Thakur

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 14-08-2018

Heard both sides.

The petitioners filed this Civil Misc. petition against the order dated 04.08.2016 passed in Misc. Case No. 22 of 2012 by which the petition of the petitioners for substituting them as petitioners in place of Raj Kumar Raut has been dismissed as not maintainable.

The admitted facts are that Prayag Chaudhary, respondent no. 2, filed Title Suit No. 179 of 2010 for declaration of title and confirmation of possession for the suit land mentioned in Schedule-1 of the plaint. The suit was decreed ex parte.



Rajeshawari Devi, the defendant of Title Suit No. 179 of 2010, and Raj Kumar Raut, the vendee of Mostt. Rajeshwari Devi, defendant of the suit, filed Misc. Case no. 22 of 2012 for setting aside the ex parte judgment and decree passed in Title Suit No. 179 of 2010. The Misc. Case was admitted for hearing. During the pendency of the Misc. Case, Raj Kumar Raut died. The petitioners being the legal heirs of Raj Kumar Raut filed petition for substituting them or make them petitioners in place of Raj Kumar Raut, who died during the pendency of the petition, but by the impugned order, learned Sub Judge-I, Madhubani held that the petition of the petitioners, who are the legal representatives of Raj Kumar Raut, who died on 04.09.2015, is not maintainable as they were not a party in the suit.

Mr. S.S. Dwivedi, learned senior counsel for the petitioners, submits that the petitioners filed petition to be substituted them in place of petitioner no. 2, who was party to the Misc. Case No. 22 of 2012, filed for setting aside the ex parte judgment and decree passed in Title Suit No. 179 of 2010. The Misc. petition is admitted for hearing, therefore, the question whether the petitioners are necessary party or Raj Kumar Raut was not a proper party in the suit does not arise. During the pendency of the Misc. petition since Raj Kumar Raut, petitioner no. 2, died,



therefore the petitioners, who are the legal representative of petitioner no. 2, Raj Kumar Raut, should have been substituted as petitioners. The merit or the fact whether the petitioners or Raj Kumar Raut are necessary party in the suit is not to be decided at the time of substitution petition and the learned Sub Judge has committed Jurisdictional error.

On the contrary, Mr. Baidyanath Thakur, learned counsel for the respondents submits that plaintiff is *dominus litis*. The plaintiff did not seek any relief against Raj Kumar Raut. Admittedly, Raj Kumar Raut purchased the land from Rajeshwari Devi after the ex parte judgment and decree passed in Title Suit No. 179 of 2010 therefore, the learned Sub Judge has rightly dismissed the petition of the petitioners to be impleaded them as petitioners in Misc. Case.

It is crystal clear that Rajeshwari Devi, the sole defendant of Title Suit No. 179 of 2010 and her vendee Raj Kumar Raut filed Misc. Case No. 22 of 2012 under Order IX Rule 13 for setting aside the ex parte judgment and decree passed in Title Suit No. 179 of 2010. The Misc. petition is admitted and during the pendency of the Misc. case Raj Kumar Raut, petitioner no. 2, died and the petitioners filed petition to be substituted in place of Raj Kumar Raut. Therefore, in my view without going into merit of



the case, whether Raj Kumar Raut is a necessary party in the Misc. Case or not, the petition for substitution of Raj Kumar Raut should be considered on its own merit and thus, I find that the learned Sub Judge has committed jurisdictional error by dismissing the petition of the petitioners for substituting them in place of Raj Kumar Raut, petitioner no. 2.

Accordingly, the order dated 04.08.2016 is set aside, the substitution petition is allowed and the Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

BKS/Rajan

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