

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.659 of 2017

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1. Munna Das Alias Munna Pandey, son of Late Parmeshwar Das alias Kapurchand Das, resident of Village- Naubatpur, Post Office Naubatpur, Police Station Naubatpur, District Patna, at present residing at Village Kochas, Post Office Kochas, Police Station- Kochas, District- Rohtas.

.... Appellant/s

Versus

1. Urmila Devi, widow of Bhim Das,
2. Poonam Devi, daughter of Late Bhim Das, Nos.1 and 2 both resident of Village- Naubatpur, Police Station- Naubatpur, District- Patna.
3. Balram Das, son of Late Amir Das, resident of Village- Govindpur, Sillhuri, Police Station- Naubatpur, District- Patna.
4. Tapeswar Sao, son of Late Mundar Sao,
5. Baiju Prasad, son of Late Mundar Sao,
6. Umeshwar Prasad, son of Late Mundar Sao, Nos.4 to 6 all are resident of Village Naubatpur, Police Station Naubatpur, District- Patna.
7. Baijnath Sao, son of Late Ramchandar Sao,
8. Jagarnath Sao, son of Late Ramchandar Sao,
9. Sona Devi, widow of Late Ramchandar Sao, Nos.7 to 9 all are resident of Village- Naubatpur, Police Station- Naubatpur, District- Patna.
10. Mithlesh Das, son of Late Tripurari Das,
11. Lalan Das, son of Late Tripurari Das,
12. Prabhawati Devi, daughter of Late Tripurari Das,
13. Shila Devi, daughter of Late Tripurari Das,
14. Renu Kumari, daughter of Late Tripurari Das, Nos.10 to 14 all are resident of Village Naubatpur, Police Station- Naubatpur, District- Patna.
15. Manoranjan Sharma, son of Late Narsingh Singh,
16. Rajmani Devi, daughter of Late Narsingh Singh,
17. Manju Devi, daughter of Late Narsingh Singh,
18. Surajmani Devi, wife of Late Kapil Singh,
19. Lilawati Devi, daughter of Late Kapil Singh, wife of Sheodat Singh,
20. Navnit Kumar, son of Lilawati Devi and Sheodat Singh, Nos.15 to 20 all are resident of Village- Telpa, Police Station- Bikram, District- Patna.
21. Sudarshan Singh, son of Late Deeplal Singh,
22. Renu Devi, wife of Late Shiyaram Singh,
23. Manoj Kumar, son of Late Shiyaram Singh,
24. Chutarni Devi, daughter of Late Deeplal Singh, Nos.21 to 24 all are resident of Village Abhranchak, Post Office Amarpura, Police Station Naubatpur, District- Patna.
25. Sanjay Kumar, son of Bindeshwari Singh,
26. Sarad Kumar, son of Bindeshwari Singh,
27. Kavita Kumari alias Sunita Kumari, daughter of Late Bindeshwari Singh,
28. Kalpana Kumari alias Suggi Kumari, daughter of Late Bindeshwari Singh, Nos. 25 to 28 all are resident of Village- Amarpura, Post Office- Amarpura, Police Station- Naubatpur, District- Patna.
29. Rampravesh Singh, son of Late Beni Singh, resident of Village- Abhranchak, Post Office Amarpura, Police Station- Naubatpur, District- Patna.



30. Mamta Devi, daughter of Ambika Singh, wife of Narendra Singh, resident of Village- Abhranchak, Post Office Amarpura, Police Station- Naubatpur, District- Patna.
31. Mathura Singh,
32. Kamlawati Devi, wife of Late Arjuna Singh,
33. Laldeo Singh, minor son of Late Arjuna Singh,
34. Baldeo Singh, minor son of Late Arjuna Singh, Nos. 33 and 34 under the guardianship of their Smt. Kamlawati Devi (mother). Nos. 31 to 34 all are resident of Village- Abhranchak, Post Office- Amarpura, Police Station- Naubatpur, District- Patna.
35. Piyare Verma, son of Late Sri Sita Ram Mahto,
36. Jitendra Verma, son of Late Sri Sita Ram Mahto,
37. Ajay Verma, son of Late Sri Sita Ram Mahto,
38. Suresh Verma. son of Late Ram Jeevan Mahto,
39. Ram Nath Verma, son of Late Ram Jeevan Mahto, Nos. 35 to 39 all are resident of Village- Motepur, Police Station- Naubatpur, District- Patna.
40. Suresh Gope, son of Late Ramashish Gope,
41. Tuntun Gope, son of Late Basodeo Gope,
42. Ram Pravesh Gope, son of Late Munsu Gope, Nos. 40 to 42 all are resident of Village Naubatpur, Police Station Naubatpur, District- Patna.
43. Smt. Gayatri Devi, wife of Sri Ram Lakhan Gope, daughter of Late Munsu Gope, resident of Village Koar, Police Station Naubatpur, Post Office Azawan, District Patna.
44. Akhilesh minor son of Sarju Singh under the guardianship of his mother Smt. Lalmati Devi,
45. Mithilesh, minor son of Sarju Singh under the guardianship of his mother Smt. Lalmati Devi,
46. Asha, minor daughter of Sarju Singh under the guardianship of his mother Smt. Lalmati Devi, Nos. 44 to 46 all are resident of Village- Govindpur Silhauri, Police Station Naubatpur, District- Patna.
47. Lilawati Devi, daughter of Late Sarju Singh, wife of not known, resident of Village Naubatpur, Police Station Naubatpur, District- Patna.
48. Ram Chandra Yadav, son of Late Dwarika Yadav, resident of Village- Hadeshpur, Police Station- Naubatpur, District- Patna.
49. Dewanti Devi, daughter of Late Amir Das, resident of Village- Govindpur, Silhauri, Police Station- Naubatpur, District- Patna.
50. Mania Davi, daughter of Amir Das, resident of Village- Govindpur, Silhauri, Police Station- Naubatpur, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Khatim Reza
For the Respondents No. 1 &2 : Mr. Syed Qaisar Hasan
For the Respondents No. 3 : Mr Nawal Kishore Singh
: Mr. Upendra Mishra

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**



3 31-07-2018 Heard the learned counsel for the petitioner, learned counsel for respondent no. 1 and 2 and the learned counsel for respondent no. 3.

The petitioner has filed this Civil Misc. Petition against the order dated 18.01.2017 by which the petition of the petitioner filed under Order I Rule 10 and Order XXII Rule 3 read with Section 151 and of the C.P.C. has been rejected on the ground that suit shall not abate and the suit is at final stage of argument.

Admittedly, Amir Das got five sons namely Parmeshwar Das, Chhattu Das, Bhim Das, Balram Das and Dinesh Das who filed suit for declaration of sale deed executed by Amir Das as null and void, inoperative, without consideration and not acted upon.

During the pendency of the suit, Parmeshwar Das, plaintiff no. 1, Chhattu Das, plaintiff no. 2, Bhim Das, plaintiff no. 3 and Dinesh Das, plaintiff no. 4 died. Chhattu Das and Dinesh Das died issueless. Bhim Das died leaving behind his widow and one daughter. Balram Das is sole surviving brother of other plaintiffs. The petitioner filed petition claiming to be son of Parmeshwar Das for substitution in place of Parmeshwar Das. The legal heirs of Bhim Das, respondent no. 1 and 2 supported the



claim of the petitioner that the petitioner is son of Parmeshwar Das, plaintiff no. 1 but Balram Das, plaintiff no. 4 contested the petition and stated that petitioner is not the son of plaintiff no. 1.

The learned Sub Judge-XI, Patna, after hearing both sides rejected the petition of the petitioner filed under Order I Rule 10 and Order XXII Rule 3 read with Section 151 of the C.P.C. on the ground that now the suit is ripe for argument and the suit will not abate and dismissed the substitution petition.

The learned counsel for the petitioner submits that petitioner being the son of Parmeshwar Das is entitled to be substituted under Order XXII Rule 3 of the C.P.C. If the Court has any doubt on the basis of contention of either party, the Court can hold enquiry under Order XXII Rule 5 of the C.P.C. but can not dismiss the petition of the petitioner for being impleaded as plaintiff in place of his deceased father without holding any enquiry. Thus, the order is illegal and not sustainable.

The learned counsel for the respondent no. 1 and 2 simply supported the case of the petitioner but Mr. Nawal Kishore Prasad Singh, learned counsel for the respondent no. 3/plaintiff-Balram Das, has submitted that the petitioner claims himself to be son of Parmeshwar Das but the claim of the petitioner is disputed. According to him, Parmeshwar Das died issueless but at the same



time admitted the position of law that if any dispute is raised with regard to the genuineness of legal heirs of deceased/plaintiff, the Court is bound to hold enquiry under Order XXII Rule 5 of the C.P.C.

The sole question arises for consideration on the basis of the submission of the parties that whether the order rejecting the petition of the petitioner for being impleaded as plaintiff in the case suffers from any illegality?

Admittedly, the petitioner claims himself to be the son of the Parmeshwar Das and he prayed to be impleaded as plaintiff in the suit. The legal heirs of Bhim Das, one of the plaintiffs, also supported the case of the petitioner that he is son of Parmeshwar Das but Balram Das contended that suit shall not abate and also disputed the claim of the petitioner that he is son of Parmeshwar Das.

In view of the provision as contained in Order XXII Rule 5 of the C.P.C. which provides that where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court by holding enquiry but it appears from perusal of the order of learned Sub Judge that since suit shall not abate on account of non substitution of legal heirs of plaintiff no.



1, petition of the petitioner for his substitution in place of his father has been rejected.

Thus, I find that the order suffers from illegality in view of the provision as contained in order XXII Rule 5 of the C.P.C. and the Court should have held enquiry in order to ascertain the claim of the petitioner for being impleaded as plaintiff in place of Parmeshwar Das, being the legal heir of Parmeshwar Das. Accordingly, the order dated 18.01.2017 passed by learned Sub Judge-XI, Patna in Title Suit No. 82 of 1977 is set aside with a direction to the Court below to hold enquiry and pass order in accordance with law on the petition of the petitioner for his substitution in place of Parmeshwar Das, plaintiff no. 1, within a period of three months from the date of receipt of this order.

This Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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