IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3014 of 2017
In
First Appeal No.214 of 2012

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1. Sunila Kumari, wife of late Bhavdish Jha @ Bhawadish Jha.
2. Kranti Kumar
3. Sanjay Kumar
4. Aditya Kumar
   All sons of late Bhavdish Jha @ Bhawadish Jha
5. Arpana Anu, D/O-late Bhavdish Jha @ Bhawadish Jha.
6. Kumari Sipra Sonu, D/O-late Bhavdish Jha @ Bhawadish Jha, Wife of Shri Rajeev Ranjan Jha

... ... Petitioners

Versus

1. Most. Sumitra Devi, wife of late Bhola Jha
2. Ram Pukar Jha, son of late Bhoja Jha

... ... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Bhubneshwar Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL ORDER

7 19-12-2018 Heard learned counsel for the applicants as well as learned counsel appearing for the opposite parties.

This petition has been preferred by legal representatives of sole appellant (since deceased in First Appeal No. 214 of 2012) for setting aside the order dated 08.05.2017 passed in First Appeal No. 214 of 2012.

The sole appellant (since deceased in First Appeal No. 214 of 2012) filed the above stated first appeal on 27.11.2012 against the Judgment and Decree dated 18.08.2012 and 06.09.2012 respectively passed in Title Suit No. 57 of 2004 but

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during pendency of the aforesaid first appeal, the sole appellant died and his legal representatives could not be brought on record as a result of which, the aforesaid appeal stood abated after expiry of 90 days vide order dated 08.05.2017 against which the present petition has been preferred.

In the present petition, the petitioners have filed two separate interlocutory applications i.e. I. A. No. 5296 of 2018 and I.A. No. 5297 of 2018.

I. A. No. 5296 of 2018 has been filed under Order 22 Rule 3 (1) of the C.P.C. praying therein for substitution of the petitioners in place of original appellant (since deceased in First Appeal No. 214 of 2012).

I. A. No. 5297 of 2018 has been filed under Order 22 Rule 9 of the C.P.C. for setting aside the abatement order dated 08.05.2017 and for condoning the delay of one year nine months and 27 days for not filing the substitution petition within the period of limitation.

In view of the aforesaid facts as well as submissions of the parties, I. A. No. 5297 of 2018 as well as the present petition stand allowed and delay in filing the substitution petition is, hereby, condoned and accordingly, order dated 08.05.2017 is set aside. The First Appeal No. 214 of 2012 is

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restored to its original number and file. So far as I. A. No. 5296 of 2018 is concerned, the same is also disposed of giving liberty to petitioners to file substitution petition in First Appeal No. 214 of 2012 within six weeks from today.

(Hemant Kumar Srivastava, J)

shahzad/-rajeev

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