

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.595 of 2017

1. Tara Devi W/o late Shyam Babu
2. Shashi Kumar S/o late Shyam Babu
3. Santosh Kumar S/o late Shyam Babu All 1 to 3 are resident of Mohalla- Bahuar Chaura, P.S.- Vishnupad, District- Gaya.
... .. Petitioners

Versus

1. Uma Kant Verma S/o late Lal Babu Resident of Mohalla- Daunapur, Hanuman Gachhi, P.S.- Civil Line, District- Gaya.
... ..Plaintiff-Respondent-1st Set
 2. Smt. Sushila Devi W/o Dhiraj Kumar Verma @ Shyam Kumar Resident of Mohalla- Daunapur Hanuman Gachhi, P.S.- Civil Line, District- Gaya.
... ..Principal Defendant-Respondent-2nd Set
 3. Om Prakash Verma S/o late Lal Babu
 4. Sanjay Kumar Verma S/o late Lal Babu Both 3 and 4 are resident of Mohalla- Daunapur, P.S. Hanuman Gachhi, P.S. - Civil Line, District- Gaya.
... .. Proforma Defendants-Respondents-3rd Set
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Appearance :

For the Appellant/s : Mr. Dharmendra Kumar Sinha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 10-12-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 02.02.2017, passed by learned Sub-Judge- X, Gaya in Title Suit No.145 of 2015 by which the learned Sub-Judge allowed the petition of the plaintiff to expunge the name of defendant no.2 and dismissed the petition filed on behalf of the legal heirs of defendant no.2 for their impleadment as defendants in the suit.

Petitioners are the legal heirs of defendant no.2. The plaintiff filed the suit for declaration of title of the plaintiff and proforma defendant no.2 (now dead) be declared upon the suit



house fully described in Schedule I of the plaint and decree for recovery of possession be passed with respect to the Schedule I property. Defendant no.2 appeared in the suit and filed WS supporting the case of the plaintiff and also put forth his case that the defendant no.2 is also entitled to get declaration of title over the suit property and recovery of possession along with the plaintiff but during the pendency of the suit, the defendant no.2 Sri Shyam Babu died. Thereafter the plaintiff filed petition under Order XXII Rule 4 for expunging the name of defendant no.2 on the statement that defendant no.2 is proforma defendant but at the same time the legal heirs of defendant no.2-petitioners also filed petition for their impleadment in the suit. The learned Sub-Judge allowed the petition of the plaintiff for expunging the name of defendant no.2 from the cause title of the suit and at the same time also dismissed the petition of the petitioners for their impleadment in the suit vide order dated 02.02.2017. The petitioners being aggrieved by the aforesaid order filed this civil miscellaneous petition.

Learned counsel for the petitioners submits that the plaintiff in the relief portion seeks declaration of title of the plaintiff and defendant no.2 over the suit land and prayed for recovery of possession in favour of the plaintiff and defendant no.2 but after death of defendant no.2 the plaintiff filed petition for



expunging his name. It is submitted that the defendant no.2 is a necessary party and if the legal heirs of defendant no.2 are not allowed to be substituted, the legal heirs of defendant no.2 shall not be entitled to file appeal in case of dismissal of the plaint. It is further submitted that defendant no.2 and his legal heirs after his death has got right over the property and they are entitled to get recovery of possession of the property along with the plaintiff. The defendant no.2 and his legal heirs, in case plaintiff compromises the suit with the defendants, are entitled to be transposed as plaintiffs in view of the nature of the suit and the right of the defendant no.2, therefore, expunging the name of defendant no.2 and not allowing the legal heirs of defendant no.2 after his death to be impleaded as defendants is erroneous and illegal.

The learned counsel for the respondents submits that the defendant no.2 is only proforma defendant and the learned Sub-Judge has rightly expunged the name of defendant no.2. Order XXII Rule 4 says that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.



From bare perusal of the plaint, it appears that the plaintiff asserted in the plaint that the plaintiff and defendant no.2 have title over the property and accordingly they sought relief for declaration of title of plaintiff and defendant no.2 over the land mentioned in Schedule I of the plaint and also prayed for recovery of possession in favour of plaintiff and defendant no.2, therefore, I find that defendant no.2 has got valuable right in the suit and after his death his legal heirs have got right to be impleaded/substituted in the suit in order to contest the suit. Thus, I find that the learned Sub-Judge has committed jurisdictional error and illegality in rejecting the petition of the petitioners for allowing them to be added as defendants in the suit.

Accordingly, the order dated 02.02.2017 is set aside. The petitioners are allowed to be impleaded as defendants in the suit and the civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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