

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.170 of 2019

Ghoshpal Prasad Ray @ Ghoshpal Ray S/o Late Lorik Prasad Ray Resident
of Village-Yadurampur,P.S. Dariyapur, Dist.-Saran

... .. Petitioner

Versus

1. Sudama Ray S/o Late Jamadar Ray
2. Phulpati Devi W/o Late Sideshwar Ray
3. Santosh Ray
4. Chandan Kumar
5. Dilip Kumar
6. Pankaj Kumar
7. Ahiraj Kumar

All from 3 to 7 are sons of Late Sideshwar Ray.

8. Nibha Kumari
9. Sangita Devi

Both 8 and 9 are daughter o late Sideshwar Ray

10. Mahesh Ray S/o Late Jamadar Ray

From 1 to 10 are resident of Village-Yadurampur, P.S. Dariyapur,
Dist.-Saran

11. Ram Sakal Ray S/o Late Daroga Ray, Resident of Village-Yadurampur,P.S.
Dariyapur,Dist.-Saran

12. Lalsa Devi W/o Late Vijay Ray
13. Saroj Kumar
14. Nitesh Kumar

Both 13 and 14 are sons of late Vijay Ray

15. Poonam Devi
16. Nikki Kumari

Both 15 and 16 are daughter of late Vijay Ray

17. Ram Narayan Ray S/o Late Chandrika Ray
18. Harendra Ray
19. Awdhesh Ray

Both 18 and 19 are sons of late Ram Bharosha Ray.

20. Punit Rai S/o Late Parma Ray

From 12 to 20 are resident of Village-Yadurampur,P.S.
Dariyapur,Dist.-Saran



21. Parmeshwar Ray S/o Late Bodha Ray

22. Bipati Kunwar wife of Late Jugeshwr Rai

23. Subash Ray

24. Budhan Ray

25. Vinod Ray

From 23 to 25 are sons of late Jugeshwar Ray

26. Manti Devi

27. Lalti Devi

Both 26 to 27 are daughters of late Jugeshwar Ray

28. Rajeshwar Ray S/o Late Bodha Ray

From 21 to 28 are resident of Village-Yadurampur, P.S. Dariyapur,
Dist.-Saran

29. Marachhia Kunwar W/o Late Channu Ray, D/o Late Raj Narayan Ray
Resident of Village-Natha Chapra, P.S. Dariyapur, Dist.-Saran

30. Manturni Devi W/o Rameshwar Ray, D/o Late Raj Narayan Ray Resident of
Village-Chand Chak, P.S-Bheldi, Dist.-Saran

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Anil Kumar Maharaj, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 12-04-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order 24.09.2018 passed by the learned Sub Judge, Sonapur, Saran in Title Suit No. 272 of 2010 whereby an application filed by the respondents-1st set (defendants 1st Set) dated 28.05.2018 under Order 22 Rule 10 read with Section 151 of the Code of Civil Procedure (for short 'C.P.C.') has been



allowed and the defendant 1st set has been directed to be transposed as plaintiffs.

2. It is submitted by the learned counsel for the petitioner that the original plaintiff has two daughters but instead of impleading them as plaintiffs, the court has erroneously transposed defendants 1st set as plaintiffs. He contended that the order impugned is erroneous in law and the same has been passed without complying with the provisions prescribed in law. The court below has failed to appreciate that right to pursue the suit was vested in the legal representatives and heirs of the deceased and not the defendants 1st set.

3. I have heard learned counsel for the petitioners and perused the impugned order.

4. The original plaintiff had filed Title Suit No. 272 of 2010 in the court of Sub Judge-I, Saran at Chapra for declaration of his right and possession over the suit land described in Schedule-3 of the plaint as also for declaration that the defendant-3rd set have no right and title over the said land and their actions are illegal. The defendant 1st set as well as second set appeared and filed their respective written statements. Similarly, the defendant 3rd set also filed his written statement. During pendency of the case, the original plaintiff



died but his heirs or legal representatives did not file any application before the court that right to sue survives and they want to be impleaded as party. In absence of any application from the heirs and legal representatives of the original plaintiff, the defendants 1st set filed an application before the trial court that they have already purchased the suit land through registered deed from the original plaintiff and, thus, they be transposed as plaintiffs. The said application filed by the defendants-1st set was allowed vide impugned order dated 24.09.2018 passed by the trial court.

5. Being aggrieved by the aforesaid order dated 24.09.2018, the petitioner has filed the instant application. At this stage, it would be relevant to note that Order 22 Rule 10 of the C.P.C. postulates continuation of suit by or against a person who has, by devolution, assignment or creation, acquired any interest during the pendency of a suit by leave of the court. The rule is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject of the suit has devolved upon another during pendency of the suit. Such a suit may be continued with the leave of the court against the person acquiring the interest including any right created in the subject matter of the suit.



6. Since the defendant 1st set has taken a plea that they have purchased the suit land from the original plaintiff, no error can be found with the order passed by the trial court whereby it has allowed their application for being transposed as plaintiff upon death of the original plaintiff. Since the original plaintiff had died and his legal heirs did not choose to file any application to pursue the suit and be impleaded as party, no error can be found with their non-impleadment.

7. In view of the discussions made above, I see no reason to interfere with the order impugned in exercise of supervisory jurisdiction. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	

