

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1222 of 2017

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Munna Lal Kesari son of Late Suraj Prasad Keshari, Resident of Jagdishpur,
P.O. and P.S. Jagdishpur, District Bhojpur.

... ..Defendant no. 4-Petitioner.

Versus

1. Anand Mohan Prasad
2. Jiwan Prasad @ Jiwan Priyadarshi.
3. Jai Shankar Prasad,
All sons of Bishun Dayal Prasad. All Residents of Village- Jagdishpur, P.O.
and P.S. Jagdishpur, District Bhojpur.

... Plaintiffs- Respondent 1st Party

4. Smt. Renu Kuer, wife of Late Suraj Pd. Keshari.
5. Sunaina Kuer widow of Late Sheojee Prasad.
6. Rajesh Prasad Keshari.
7. Golu Kumar
Both sons of Late Sheopujan Prasad.
8. Guriya Kumari.
9. Sweety Kumari.
10. Priyanka Kumari.
11. Manisha Kumari,
All daughter of Late Sheojee Prasad.
12. Kanhaiya Prasad.
13. Kittu Kumar Keshari, both sons of late Suraj Prasad Keshari.
All residents of Jagdishpur, P. O. & P.S.- Jagdishpur, District- Bhojpur.

... ..Defendants-Respondents 2nd Party

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Appearance :

For the Petitioner	:	Mr.Ramadhar Singh, Advocate Mr. Harendra Kumar, Advocate
For the Respondents	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-05-2019

This application under Article 227 of the Constitution of
India has been filed by the petitioner challenging the order dated
08.03.2017 passed by the learned Sub-Judge, Jagdishpur, District-



Bhojpur in Title Suit No. 537 of 2009 whereby he has rejected the application of the petitioner, who was defendant no. 4 in the said title suit filed under Order XXII, Rule 4(3) of the Code of Civil Procedure (for short 'CPC').

2. Learned counsel for the petitioner submitted that the trial court has committed error in rejecting the petition of the petitioner filed under Order XXII, Rule 4(3) of the CPC. He contended that during the pendency of the suit, defendant no. 2 Sheojee Prasad died on 11.08.2013 but the plaintiff did not choose to substitute his heirs and legal representatives within prescribed period of limitation. Hence, the suit, as against defendant no. 2 got abated. On 15.04.2014, the plaintiffs filed an application to substitute the heirs of deceased Sheojee Prasad, who had died on 11.08.2013. The plaintiffs in the said petition had not prayed for setting aside the abatement. However, the trial court treating the substitution petition filed within the period of limitation allowed the same vide order dated 11.04.2016. Thereafter, on 13.06.2016, an application was filed under Order XXII, Rule 4(3) of the CPC stating inter alia that the suit had abated against defendant no. 2 and without setting aside the abatement, the suit could not have proceeded, but the application filed by the petitioner was rejected vide order dated 08.03.2017.



3. On query, learned counsel for the petitioner admitted that order dated 11.04.2016 whereby the substitution petition of defendant filed by the plaintiff had been allowed, has never been challenged.

4. In absence of challenge to the aforesaid order dated 11.04.2016 whereby the heirs of original defendant no. 2 were substituted, the petitioner cannot assail the order dated 08.03.2017 passed by the trial court.

5. In that view of the matter, I am not inclined to interfere with the order impugned. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.05.2019
Transmission Date	NA

