

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.273 of 2019**

Ram Naresh Rai, S/o Late Chalitar Rai, resident of Village-Jawahi, P.S. Sursand, P.O.-Radhaur, District- Sitamarhi.

... .. Defendant No.3/Petitioner

Versus

1. Ram Pukari Devi @ Karia Devi, W/o Jageshwar Rai, resident of Village-Bishanpur, P.S.- Parihar, District- Sitamarhi.
2. Ram Kumar Jha, S/o Late Rajendra Jha, Resident of Village- Jawahi, P.S.-Sursand, District- Sitamarhi.

... .. Plaintiffs/Respondents

3. Raj Kishor Rai, S/o not known, resident of Village-Kusail, P.S.-Pupri, District- Sitamarhi.
4. Birendra Rai, S/o Raj Kishor Rai, resident of Village- Kusail, P.S. Pupri, District- Sitamarhi.
5. Rani Devi D/o Raj Kishor Rai, resident of Village- Kusail, P.S.-Pupri, District- Sitamarhi.

... .. Defendant No.1, 1(ka), 1(Kha)/Respondents

6. Sudhir Rai, S/o Ram Naresh Rai, resident of Village- Jawahi, P.S.-Sursand, District- Sitamarhi.
7. Ram Niwas Rai, S/o Ram Naresh Rai, resident of Village-Jawahi, P.S.-Sursand, District- Sitamarhi.

... .. Defendant No.4 and 5/Respondents

... .. Respondent/s

Appearance :

For the petitioner/s	:	Mr. Alok Kumar Jha, Advocate Mr. Santosh Kumar Pandey, Advocate
For the Respondent/s	:	Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 26-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 25.09.2018 passed by the learned Munsif, Pupri at Sitamarhi in Title Suit No.33 of 1997 by which he has allowed the petition



filed by one Ram Pukari Devi @ Karia Devi to be substituted in place of original defendant no.2 Late Bindeshwar Roy.

3. Learned counsel appearing for the petitioner submitted that the order impugned has been passed erroneously relying upon the socio-economic caste census list and ignoring the contentions advanced by the petitioner, who is nephew of deceased Bindeshwar Roy. He contended that Ram Pukari Devi is not the daughter of Late Bindeshwar Roy rather she is daughter of Late Ram Charitar Roy, who was brother of Late Bindeshwar Roy. He further contended that the reliance placed by the learned Munsif is of course on the basis of document issued by an authority of the State Government, but it was not prepared in ordinary course of official conduct. He overlooked the material document produced by the petitioner in support of his contention and relied upon the socio-economic caste census list which was either manipulated or had no probative value.

4. Under Order 22 Rule 5 of the Code of Civil Procedure, it is provided 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.



5. It is well settled position in law that for the purpose of substitution as provided in law is only to represent the estate of deceased before the court of law in a litigation and mere substitution of a person does not amount to declaration of his right and title in respect of the disputed properties. The substituted person can only pursue and protect the interest of the deceased in a litigation before the court of law.

6. It is true that before substituting any person in place of a deceased party in a litigation, the court is required to see as to whether proper person is being substituted or not. For the said purpose, an inquiry has to be conducted. Such inquiry is summary in character.

7. In the instant case, from the order impugned, it would be apparent that the learned Munsif conducted an inquiry and took evidence of the parties and after taking evidence, nevertheless summary in nature, relied upon the socio-economic caste census list, which is a public document and which disclosed that Ram Pukari Devi is daughter of late Bindeshwar Rai. Apart from the documentary evidence, even the plaintiff also identified her as daughter of deceased-defendant in the court.



8. Based on such evidence, if the learned Munsif has allowed Ram Pukari Devi to be substituted in place of deceased-defendant Bindeshwar Rai, no illegality can be found in the order.

9. In view of the discussion made above, I see no reason to interfere with the order impugned in my supervisory jurisdiction under Article 227 of the Constitution of the India.

10. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	NA

