

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.401 of 2019**

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Yamuna Prasad @ Yamuna Singh S/o Sita Ram Singh Res. of Vill.- Chauro,
P.S.- Kuchaikote, Distt.- Gopalganj.

... .. Petitioner/Appellant

Versus

1. Ram Raj Bhagat and Anr S/o Raghunandan Bhagat Resident of Mahunawa,
P.S.- Kuchaikote, Distt.- Gopalganj.
2. Parmaniya Devi W/o Chandrama Bhagat Res. of Mahunawa, P.S.-
Kuchaikote, Distt.- Gopalganj.

... .. Respondents-Defendants

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Srivastava, Adv.
For the Respondent/s : Mr.

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

Date : 05-07-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 01.07.2016 passed by the learned Additional District Judge-V, Gopalganj in Title Appeal No.11 of 2000 whereby and whereunder the application filed by the petitioner under Order 1, Rule 10(2) of the Code of Civil Procedure (for short 'CPC') for being added as a party has been rejected.

2. The contention of the learned counsel for the petitioner is that one Sonkesia Devi daughter of Late Jagarnath Bhagat was appellant no.3 in Title Appeal No. 11 of 2000. Sonkasia Devi died on 27.12.2015. She was issueless. The petitioner is her husband. Since there was no other legal heir of



Sonkasia Devi, the petitioner filed an application on 08.06.2016 under Order 1, Rule 10(2) of the CPC with a prayer for adding him as party in the said title appeal before the learned Additional District Judge-V, Gopalganj. However, the learned Additional District Judge-V, Gopalganj rejected the prayer of the petitioner vide impugned order dated 01.07.2016.

3. He has further contended that the court below has failed to consider that at any stage of the proceeding the party, whose presence is necessary, may be added for appropriate adjudication of the suit under Order 1, Rule 10 of the CPC. He contended that there was no intentional delay on the part of the petitioner and in the interest of justice the court below ought to have added him as an appellant in place of his wife Sonkasia Devi.

4. Having heard the petitioner and perused the materials on record, I find that under the Code of Civil Procedure a legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent may be added as party if an application in this regard is filed within 90 days of the date of death of the plaintiff, appellant, defendant or respondent as the case may be.

5. In the instant case, admittedly, appellant no.3 died on 27.12.2015. No application was filed within 90 days of the death of the appellant no.3 by the petitioner for being added as a party.



He filed an application in this regard on 08.06.2016 i.e. much beyond the period of limitation prescribed under Article 120 of the Limitation Act, 1963. It would also be manifest that no application for condonation of delay was filed by the petitioner before the court below. Furthermore, in view of Article 121 of the Limitation Act, an application for setting aside abatement could have been filed within 60 days from the date of abatement. Since the wife of the petitioner had died on 27.12.2015, the appeal as far as appellant no.3 is concerned had abated and no application for setting aside the abatement was ever filed by the petitioner.

6. Under the circumstances enumerated above, I am of the opinion that there is no jurisdictional error in the order passed by the court below whereby the application of the petitioner for being impleaded as an appellant has been rejected.

7. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08-07-2019
Transmission Date	

