

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1362 of 2018

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Nand Rani Devi W/o Braj Bhushan Pathak, resident of Village- Hardawar,
P.S. Dobhi, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Circle Officer, Dobhi Anchal Dobhi, Dist.- Gaya.
3. The Circle Inspector, Dobhi Anchal Dobhi. null null
4. Raman Yadav, S/o Late Ganga Yadav, resident of Village- Kamunia, P.S.-
Dobhi, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shobha Nath Jha

For the Opposite Party/s : Mr. Arun Kumar Bhagat, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 05-02-2019 Heard learned counsel for the parties.

A writ application was filed by Nand Rani Devi, who admittedly died on 18.10.2009 during the pendency of C.W.J.C. No. 12913 of 2005 filed by her. The petitioner is said to have filed an application for substitution being I.A. No. 6719 of 2010, claiming herself to be the heir and legal representative of the deceased, which was rejected by order dated 22.04.2013, since the petitioner did not disclose her relationship with the deceased Nand Rani Devi. The petitioner of C.W.J.C. No. 12913 of 2005 is said to have executed a will on 29.09.2005 in favour of the present petitioner who had filed a probate case, which, it is stated has been allowed on 16.09.2015. This is the background, in which the present application has been filed for setting aside the abatement due to norms of situation of legal heirs of the



petitioner of C.W.J.C. No. 12913 of 2005.

Learned counsel, appearing on behalf of the petitioner, has submitted that the subject matter of the land, which was subject matter of C.W.J.C. No. 12913 of 2005, was the subject matter in probate case also, which has been allowed on 16.09.2005. It is in this background, that a prayer is being made for setting aside the abatement by filing the present M.J.C. No. 1362 of 2018.

Learned counsel, after having appreciated the complexities, which may arise, has submitted that the petitioner should be given liberty to file afresh writ petition, raising the same grievance, which was raised in C.W.J.C. No. 12913 of 2005.

Apparently, the Court did not have any occasion to go into the merits of C.W.J.C. No. 12913 of 2005 at any point of time. If any writ application is filed by the petitioner, the doctrine of *res judicata* will have no application.

Considering the above, this application is disposed of with a liberty to the petitioner to file a fresh writ petition.

(Chakradhari Sharan Singh, J)

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