

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No.135 of 2018**

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1. Chinta Devi Wife of Late Subhash Singh
2. Ram Kishore Singh @ Ram Kishor Sharma, Son of Late Raghuwar Singh
3. Deo Kishore Singh @ Deo Kishore Sharma, Son of Late Raghuwar Singh
4. Santosh Singh @ Santosh Sharma, Son of Late Subhash Singh
5. Manoj Kumar @ Manoj Sharma Son of Late Subhash Singh
6. Sudhir Kumar @ Sudhir Sharma, Son of Deo Kishore Singh @ Sharma
7. Pappu Kumar, Son of Ram Kishore Singh @ Ram Kishore Sharma.
8. Guddu Kumar @ Guddu (wrongly mentioned as Tattu Kumar), Son of Ram Kishore Singh @ Ram Kishore Sharma, All resident of Village- Belsar, Police Station- Arwal (now Mehandia), District- Jehanabad (now Arwal).

... .. Petitioner/s

Versus

Santosh Kumar Pandey Son of Late Suryabansh Pandey, resident of Village- Kaupa, Police Station- Karakat, District- Rohtas, at present resident of Village- Belsar, Police Station- Mehandia, District- Arwal.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ramakant Sharma, Sr. Adv. |
|                      | : | Mr. Rajesh Kumar, Adv.        |
| For the Respondent/s | : | Mr. Ram Bali Jha, Adv.        |

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**Date : 16-09-2019**

Heard the parties.

2. This civil revision application has been filed for setting aside the order dated 10.08.2018 passed in Miscellaneous Case No. 02 of 2017 by 2<sup>nd</sup> Additional District Judge, Jehanabad by which he has allowed application of petitioner under Order 22 Rule 3 of C.P.C. for substituting the name of opposite party against deceased/appellant who died during pendency of appeal.



3. Plaintiffs/petitioners filed Title Suit No. 35 of 1987 in the court of learned Sub-Judge, Jehanabad stating therein that the suit land is recorded in the name of Gurusahay Singh in Survey operation of 1897. Guru Sahay Singh had a Bhagina, namely, Pran Singh who lost his parents and said Gurusahay Singh out of love and affection brought him from his ancestral place and looked after his well being and got him married and from said marriage one son Ramprit Singh was born. Gurusahay Singh died leaving behind his only son Brahmdeo Singh (father of original plaintiff). Pran Singh died leaving behind his widow Raj Kunwar and minor son Ramprit Singh.

4. Second survey operation was initiated in 1913-14 and Brahmdeo Singh was only entitled to be recorded over the entire land of Guru Sahay Singh. However, at the instance of widow of Pran Singh, namely, Raj Kunwar after Panchayati some land were permitted to be utilized by said widow Raj Kunwar and her son Ramprit Singh for their livelihood, for which land was given to them for which Panchnama and compromise dated 23.03.1913 was prepared upon which Jamabandi was opened in the name of Raj Kunwar and her son Ramprit Singh. According to which 1/3<sup>rd</sup> of total



land of Brahmdeo Singh was transferred conditionally in favour of Ramprit Singh and as such in the survey Khatiyan of 1914, 37 Bighas of land were recorded in Khata No. 81 and 300 as Brahmdeo Singh having two shares and Ram Prit Singh having one share which was also recorded in the Khatiyan of 1931. Father of original defendant, namely, Ram Prit Singh was neither a title holder nor a co-sharer of Brahmdeo Singh but was simply given possession over specific plot, as such, possession of Ram Prit Singh over different plots were recorded in the remark column which was permissive.

5. Ram Prit Singh died on 15.09.1985 and widow Raj Kunwar pre-deceased him, as such, the grant made for said two persons terminated and land again vested in the plaintiffs.

6. Ram Prit Singh executed a will in favour of his daughter Asharfi Kuer (defendant) with respect to said land, although he was not competent to execute deed of will in favour of defendant and accordingly plaintiff sought a declaration that deed of will dated 01.03.1955 executed by Ramprit Singh in favour of defendant is illegal and inoperative.

7. The defendant/opposite party appeared and filed their written statement stating that suit property was orally



gifted to Pran Singh by Gurusahay Singh before cadastral survey and as such he became absolute owner and after his death his descendants and defendants are in possession over the same. The suit was decreed in favour of plaintiff /petitioner vide judgment dated 18.11.1999 and decree dated 24.02.1992.

8. Defendant preferred an appeal being Title Appeal No. 09 of 1992/18 of 1998 and plaintiff /petitioner appeared but due to non-appearance of appellant the appeal was dismissed vide order dated 31.07.2009. Defendant filed Miscellaneous Case No. 34 of 2009 for restoration of appeal and Title Appeal No. 9 of 1992 was restored vide order dated 25.05.2013 and appeal was fixed for hearing on 13.09.2017 but on repeated calls none appeared for appellant and appeal was again dismissed on 30.06.2017 and again Miscellaneous Case No. 02 of 2017 was filed for restoration of appeal in which plaintiff/petitioner appeared.

9. Opposite party Santosh Kumar Pandey filed a petition under Order 22 Rule 3 of C.P.C. on 24.03.2018 that Asharfi Kunwar sole appellant died on 18.01.2018 leaving behind her step son, namely Santosh Kumar Pandey of village Kaupa, Rohtas stating therein that the original sole defendant/sole appellant was issueless and property was claimed



from parental side by original defendant/appellant and Santosh Kumar Pandey being her step son and property of husband of deceased Ashrafi Kunwar was blended with joint family property and under a family settlement which was taken place in the year June 2012 in which deceased Asharfi Kunwar was allotted only one room and some movable property, jewellery and remaining immovable property fell in the share of Santosh Kumar Pandey. Proposed appellant had claimed himself to be legal heir of deceased sole appellant Asharfi Kunwar and prayed for substituting his name which was objected by the plaintiff/petitioner on the ground that deceased Asharfi Kunwar the original defendant/appellant admitted that she is claiming on the basis of inheritance/will from her parental side and she also admitted that she was issueless widow and as such any property coming from the parental side to said deceased Asharfi Kunwar reverted back to her parental family and proposed legal heir Santosh Kumar Pandey has no legal right to be substituted in place of deceased Asharfi Kunwar and as such prayed for dismissal of substitution petition.

10. The lower appellate court has held in his order dated 10.08.2018 as impugned in this revision petition that sole appellant Asharfi Kunwar died on 15.01.2018 leaving



behind her step son Santosh Kumar Pandey son of Late Surajwansh Pandey who has filed a substitution petition for expunging the name of original appellant Asharfi Kunwar and substituting the name of her step son Santosh Kumar Pandey which was opposed on behalf of plaintiff/petitioner that Santosh Kumar Pandey is not the son of appellant Asharfi Kunwar as she had admitted that she is issueless and she was litigating claiming her parental share which was refused by the trial court. She was issueless widow so whatever her claim was with respect to her parental property reverted back to the side of parental family and no interest passed to the petitioner who claims to be her step son, as such, he is not a legal heir or representative and has no interest in her parental property and prayed to reject the substitution petition. However, the lower appellate court has found that petitioner is step son of deceased sole appellant Asharfi Kunwar which has been admitted by the plaintiff/petitioner and allowed the substitution petition filed on behalf of opposite party which is under challenge in present civil revision petition.

11. Counsel for the petitioner has relied upon a judgment of Apex Court reported in AIR 2002 Supreme Court in case of Bhagat Ram Vs Teja Singh in which it has been held that



property of a female Hindu who has inherited the property from her parental side after her death will revert back to her parental side and not to the legal heir of her husband, if she dies without leaving any class-I heir. Relevant para-6 of said judgment is quoted below:-

6. The relevant Section in the Hindu Succession Act, 1956 reads as follows:-

**“15. General rules of succession in the case of female Hindus.”**-(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband:

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the



absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1), in the order specified therein, but upon the heirs of the husband.

12. In view of law laid down by the Apex Court in case of a Female Hindu dying intestate her property will devolved upon the legal heirs, depending upon the source of inheritance and in present case since she is claiming the property in the suit on the basis of a will executed by her father in her favour and even that will was never probated and the trial court found that same did not confer any title and interest in her and had decreed the suit of the plaintiff against which she had filed the present appeal which was dismissed for default for which a restoration petition was filed giving rise to Miscellaneous Case and during pendency of said miscellaneous case the sole defendant/appellant died and for which a substitution petition was filed on behalf of opposite party claiming to be her step son who has no right and interest in the suit land as same will revert to the legal heirs of her father and not upon the legal heirs of her husband as such opposite party cannot claim to be legal heir of deceased sole defendant/appellant.



13. However, as defined under Section 2 of the definition clause of C.P.C. legal representatives are not confined to the legal heirs but also those who intermeddle with the estate of the deceased are also legal representatives who have right to be substituted in place of deceased party. Accordingly, the order passed by the lower appellate court is set aside and the matter is remanded to re-consider the substitution petition filed by opposite party, as per direction and observation made in forgoing paragraphs.

The civil revision petition is allowed.

**(S. Kumar, J)**

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