

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3921 of 2018

In
FIRST APPEAL No.18 of 2016

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Dinesh Singh @ Dinesh Kumar Singh, Son of Sadhu Sharan Singh, Resident of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna. Petitioner/s

Versus

1. Pankaj Singh,
2. Dheeraj Singh,
Both Sons of Late Awadhesh Singh,
3. Pushpa Singh @ Suman, Daughter of Late Awadhesh Singh,
4. Mostt. Jagat Rani Devi, Wife of Late Awadhesh Singh,
All Residents of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna.
5. Asha Singh, Wife of Late Awadhesh Kumar Singh, Resident of Mohalla- Manpur, Gorakchhini, Behind Bus Stand (Ram Vilash Kothi), Police Station- Muffasil, District- Gaya.
6. Usha Singh, Wife of Mahender Prasad Singh, Resident of Bank Colony, Jagdeo Path, Police Station- Hawai Adda, District- Patna.
7. Kiran Singh, Wife of Uday Prakash Singh, Resident of Flat No. 205, Pranjali Apartment, West Boring Road, Police Station- S.K. Puri, District- Patna.
8. Meena Singh, Wife of Rajender Prasad Singh, Resident of Quarter No. 259, A.P. Colony, Police Station- Rampur Chowk, District- Gaya.
9. Neelam Singh, Wife of Arun Singh, Resident of West Boring Canal Road, Police Station- S.K. Puri, District- Patna.
10. Punam Singh, Wife of Dhananjay Prasad Singh, Resident of Flat No. 203, Minara Place, Near Gandhi Maidan, Police Station- Gandhi Maidan, District Patna.
All Daughters of Late Sadhu Saran Singh
11. Manjiu Devi, Wife of Late Mithilesh Singh,
12. Soni Singh,
13. Moni Singh,
14. Toni Singh,
All Daughters of Late Mithilesh Singh,
15. Mahesh Singh,
16. Dinesh Singh,
Both Sons of Late Sadhu Sharan Singh,
17. Ritesh Singh, Son of Late Mithilesh Singh,
All Residents of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District Patna, 800 004.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar

For the Opposite Party/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL ORDER

5 10-04-2019 Heard learned counsel for applicant. No one appears on behalf of opposite parties in spite of service of notice upon them.

Perused the records.

The applicant wants modification in order dated 28.11.2017 on the ground that this Court wrongly granted liberty to opposite parties to file fresh suit before competent court.

Learned counsel of the applicant submits that, as a matter of fact, the opposite parties have no right to file fresh suit on the same cause of action as fresh suit is barred by law but even then, this Court has granted liberty to opposite parties to file fresh suit.

I am not at all convinced with the aforesaid submission, because the order dated 28.11.2017 passed in First Appeal No. 18 of 2016, goes to show that the liberty to file fresh suit was granted by the lower court *vide* impugned judgment dated 28.11.2015 passed in Title Suit No. 141 of 2001 and this Court has never granted liberty to opposite parties to file fresh



suit.

It is obvious from perusal of the record that the opposite parties filed First Appeal No. 18 of 2016 challenging the judgment and decree dated 28.11.2015 passed by learned Sub-ordinate Judge-IV, Patna in Title Suit No. 141 of 2001 but, subsequently, the opposite parties filed a petition for withdrawal of aforesaid appeal with right to file fresh suit before competent court in the light of liberty granted to them by the trial court *vide* impugned judgment dated 28.11.2015 and in the light of aforesaid petition, this Court permitted the opposite parties for withdrawal of First Appeal No. 18 of 2016 with liberty as granted by the trial court in Title Suit No. 141 of 2001.

Therefore, in the aforesaid circumstance, I do not find any ground for modification of order dated 28.11.2017 passed in First Appeal No. 18 of 2016 and, accordingly, this modification petition stands disposed of.

(Hemant Kumar Srivastava, J)

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