

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.19 of 2017

In
Civil Writ Jurisdiction Case No.9387 of 2011

Nitin Kumar Son of Negeshwar Prasad Singh, Resident of village - Randaha,
P.S. Raja Pakar, District - Vaishali at Present residing at 6/259, Vineet Khand,
P.S. Gomati Nagar, Lucknow, Uttar Pradesh

... .. Petitioner/s

Versus

1. Smt. Sheema Kumari Wife of Nitin Kumar, Daughter of Jaleswar Prasad Singh at Present Resident of village and P.O. Rahimapur, P.S. Bidupur, District- Vaishali, Bihar.
2. Nageshwar Prasad Singh, Son of Late Dev Lal Singh, Resident of village - Randaha, P.S. Raj Pakar, District - Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Kamal
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 28-08-2019

The present review petition has been filed for review of the order dated 22.09.2015 passed in CWJC No. 9387 of 2011, whereby and whereunder the writ petition has been allowed and the order dated 21.05.2011 passed by the learned Sub-Judge-1st, Vaishali at Hajipur in T.S. No. 379 of 2008, has been set aside, by which the application of the opposite party no. 2 herein namely, Nageshwar Prasad Singh (since deceased), filed under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, for his impleadment as party defendant, had been rejected.

The brief facts of the case are that the said Nageshwar



Prasad Singh (since deceased) had filed a writ petition bearing CWJC No. 9387 of 2011, assailing the order dated 21.05.2011, passed by the learned court below whereby and whereunder the application for being added as party defendant no. 2 had been rejected.

This Court by a judgment dated 22.09.2015 passed in CWJC No. 9387 of 2011 allowed the said writ petition in the following terms:-

“Title Suit no. 379 of 2008 was filed by the plaintiff-respondent 1st set for declaration of his right, title and interest over both the properties set out in Schedule 1 and Schedule 2 of the plaint. However, a further relief was prayed for re-conveyance of the land by the defendant-wife in respect of property/land detailed in Schedule-2.

The petitioner being the father of the plaintiff and father-in-law of the defendant filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure (for short ‘the CPC’) for his impleadment as defendant since the land claimed by him was also involved in the suit. The plaint clearly indicates that the land of Schedule 1 property absolutely belonged to the petitioner. The school running over the land was managed by the trustees. The petitioner being the father of the plaintiff-respondent 1st set was also one of the trustees. On the strength of these pleadings available in the plaint, the petitioner filed the said application which was



considered and rejected by order dated 21.5.2011 on amongst the grounds that in the Title Suit substantive relief only in respect of Schedule-2 property was prayed for.

Counsel for the petitioner has drawn attention of the Court to the relief part/portion of the plaint (Annexure-1) where from it appears that in para 39(A), the plaintiff has also prayed for declaration of his title. It is, therefore, in respect of both the properties detailed in Schedule-1 as well as Schedule-2. If that be the case, then the petitioner would be necessary party to the proceeding pending before the trial Court.

Having regard to the facts appearing from the record and after hearing Mr. Kumar in support of the application, I am persuaded to allow the same. It is, accordingly, allowed. Order dated 21.5.2011 passed by the learned Subordinate Judge-I, Vaishali, Hajipur in Title suit no. 379 of 2008 is set aside.

The writ application is allowed."

Thereafter, the review petitioner has filed the present review petition only on the ground that since the notice was not validly served upon him, real facts could not be brought to the notice of this Court, hence the order dated 22.09.2015 passed by the Writ Court be recalled. It is important to note that the present review petition stood dismissed for want of prosecution by an order dated 19.04.2017, where upon the review petitioner filed a restoration petition bearing M.J.C. No. 1721 of 2017 for



restoring the review petition to its original file, however, in the meantime, the aforesaid Nageshwar Prasad Singh died on 08.08.2017, hence the review petitioner filed I.A. No. 7643 of 2017 in MJC No. 1721 of 2017 (arising out of Civil Review No. 19 of 2017), for substitution of the aforesaid intervener namely Nageshwar Prasad Singh by his wife namely Manorma Devi. Subsequently, the review petitioner filed I.A. No. 9187 of 2017 in the said restoration petition, stating therein that apart from the wife, four other children of the deceased Nageshwar Prasad Singh were also required to be substituted since they were also his legal heirs. Admittedly, this Court by an order dated 04.09.2018 passed in MJC No. 1721 of 2017, allowed both the aforesaid I.A. No. 7643 of 2017 and I.A. No. 9187 of 2017 and directed the name of sons and daughters of late Nageshwar Prasad Singh to be substituted in his place. Thereafter, this Court by an order dated 09.0.2018 had been pleased to allow the restoration petition and restore the review petition bearing Civil Review No. 9 of 2017 to its original file.

Now, coming back to the present review petition, it is apparent that the petitioner herein who for no good reason, has failed to substitute the legal heirs of deceased opposite party no. 2 herein, in the present proceedings, although admittedly he has



knowledge about the same from the very beginning as is demonstrable from the aforesaid facts narrated herein above in the preceding paragraphs, despite lapse of more than 10 months from the time the present review petition was restored to its original file vide order dated 09.10.2018 passed in MJC No. 1721 of 2017, hence the present petition is fit to be dismissed on this sole ground alone since the relief sought for by the petitioner, by way of the present review petition, is in sum and substance solely against the deceased opposite party no. 2, hence on account of his death and in absence of his legal heirs, the present review petition cannot be maintained at the behest of the review petitioner, hence the review petition stands dismissed.

Even on merits, this Court finds that the orders sought to be reviewed i.e. the one dated 22.09.2015, is just and legal and does not require any interference more so for the reason that since this Court has, by the said order dated 22.09.2015, allowed the writ petition and set aside the order dated 21.05.2011 passed by the learned Sub Judge-1st, Vaishali in Title Suit No. 379 of 2008, it would be incumbent upon the learned court below to again consider the application, if any, filed under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 or any other relevant



provision by the legal heirs of the deceased Nageshwar Prasad Singh for being added as party defendant to the suit in question, on its own merit.

For the reasons mentioned herein above as also considering the facts and circumstances of the case and in view of the changed scenario on account of death of the aforesaid interverner-opposite party no. 2 herein, I do not find any merit in the present review petition, hence, the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.10.2019
Transmission Date	

