

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.173 of 2019

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Raj Kishore Pandey S/o Late Kedar Pandey R/o 33, Ward No. 02,
Charitravan, Teachers Colony, P.O. + P.S. Koran Sarai, Buxar, Bihar 802101.

... .. Appellant/s

Versus

1. Kanhaiya Pathak, S/o Late Rameshwar Pathak R/o Village Itarhiyan, P.O. Itarhian, P.S. Dhansoin, District Buxar, Bihar 802117
2. Giridhari Pandey S/o Ramraj Pandey R/o Village Chaur, P.O. Koran Sarai, P.S. Koran Sarai, District Buxar, Bihar 802126
3. Smt. Ram Dulari Devi W/o Mahendra Shukla R/o Village Chhatnawar, P.O. Chhatnawar, P.S. Dumraon, District- Buxar, Bihar 802133
4. Ghanshyam Pathak S/o Brij Pathak R/o Village Itarhiyan, P.O. Itarhian, P.S. Rajpur, District- Buxar, Bihar 802117
5. Sri Bhagwan Prasad Verma S/o Not Known to the Petitioner R/o Mohalla Thatheri Bazar, P.S. Buxar, District- Buxar, Bihar.
6. The Special Secretary-cum- Director Primary Education, Patna, Bihar.
7. The District Education Superintendent Buxar, Bihar.
8. The Sub Divisional Education Officer, Buxar, Bihar.
9. The District Education Officer Buxar, Bihar.
10. Nand Lal Pathak S/o Not Known to the Petitioner
11. Sachitra Pathak S/o Not Known to the Petitioner
12. Bishnupati Pathak S/o Not Known to the Petitioner
13. Babban Mishra S/o Not Known to the Petitioner
14. Kashinath Dubey S/o Not Known to the Petitioner
15. Sita Ram Tiwari S/o Not Known to the Petitioner
16. Rambha Mishra W/o Not Known to the Petitioner
17. Pushpa Lata Mishra W/o Not Known to the Petitioner
18. Prem Mishra W/o Not Known to the Petitioner
19. Ramjee Dubey S/o Not Known to the Petitioner

All teachers under District Education Superintendent, Buxar,
Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Binod Kumar, Advocate Mr. Ashutosh Nath, Advocate Mr. Swami Parth Sarthy, Advocate
For the Respondent/s	:	Ms. Ranjan Kumar, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT



Date : 28-03-2019

Heard Mr. Binod Kumar, learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner questioning the sustainability of the order dated 21.11.2017 passed by the learned Munsif, Buxar in Title Suit No. 82 of 1981 by which he has rejected the petition dated 21.08.2013 filed by the petitioner seeking his impleadment as a party in the suit after setting aside the order of abatement.

3. Learned counsel for the petitioner submitted that from the order impugned, it would be apparent that the court below has not considered the application of the petitioner on merit rather the same has been dismissed on erroneous grounds. It would be apparent that earlier petition dated 16.11.2011 of the petitioner was rejected on the ground of maintainability and not on merit and the order for abatement was thereafter passed. The suit was filed by the plaintiff Babban Pandey, Secretary of the school. Since Babban Pandey died, the court below came to the conclusion that the petition filed by the petitioner was not maintainable in the suit as the suit has abated after the death of the plaintiff Babban Pandey. At no stage, the claim has been considered on merits and rejection of the prayer



of the petitioner by the impugned order on technical ground is not sustainable in law.

4. Having heard learned counsel for the petitioner and perused the record, I find that Title Suit No. 82 of 1981 was filed by the original plaintiff Babban Pandey, who happened to be the Secretary of Jawahar Middle School, Nalband Toli, District- Buxar. He had filed the suit in question seeking declaration of the action of the officers of the Government of Bihar in the Education Department in taking over the school as illegal and without sanction of law. The original plaintiff died and substitution petitions were filed by the defendant no.3 Jawahar Pandey who happened to be his brother and also a teacher in the said school seeking transposition as plaintiff. The second application was filed by the petitioner Raj Kishore Pandey who was also the brother of the original plaintiff seeking impleadment in the suit under Order 1 Rule 10 of the Code of Civil Procedure (for short 'C.P.C.') and the 3rd application was filed by the widow of the original plaintiff namely, Girja Devi and some others. The substitution petition filed by Girja Devi and others was not pressed and was rejected at the outset. The learned Munsif while considering the other two applications held the application for impleadment filed by



the petitioner Raj Kishore Pandey under Order 1 Rule 10 of the C.P.C. as not maintainable. He did not find prayer for transposition made by the defendant no.3 Jawahar Pandey as plaintiff tenable on the ground that the suit was filed by the original plaintiff in the capacity of Secretary. Both defendant no.3 Jawahar Pandey as well as the petitioner Raj Kishore Pandey filed civil revision application before this Court which was subsequently converted into M.A. No. 540 of 2001. The said miscellaneous appeal was permitted to be withdrawn vide order dated 01.07.2002 affording opportunity to the appellants to raise their grievance before the appellate forum. Following the order passed by this Court on 01.07.2002 in M.A No. 540 of 2001, miscellaneous appeal was preferred under the provisions of order 43 Rule 1 (k) of the C.P.C giving rise to M.A. No. 6 of 2002. While the appeal was pending before the learned Additional District Judge, F.T.C-1, Buxur, the respondent no.3 Jawahar Pandey died and an application was filed for expunging his name from record of the proceedings. The said application was allowed by the lower appellate court by order dated 03.08.2006. The matter was thereafter heard by the lower appellate court on merits and was disposed of by judgment dated 07.09.2010 whereby while remitting the matter



back to the learned Munsif, the lower appellate court issued a direction for transposition of defendant no.3 Jawahar Pandey in place of plaintiff. In the said order, there is no discussion about the claim of the petitioner Raj Kishore Pandey seeking impleadment in the suit under Order 1 Rule 10 of the C.P.C. The said order dated 27.09.2010 was challenged by one Kanhaiya Pathak (defendant 1st set) before this Court in Civil Revision No. 6 of 2011. This Court vide order dated 16.01.2013 passed in Civil Revision No. 6 of 2013 set aside the order dated 27.09.2010 passed by the learned Additional District Judge, F.T.C-1, Buxar in M.A No. 6 of 2002 and allowed the civil revision application.

5. From the aforesaid facts, it would be evident that the application filed by the petitioner under Order 1 Rule 10 of the C.P.C. for impleadment in the suit was dismissed by the learned Munsif long back and has attained finality. Under the circumstances, if the petitioner filed another application in Title Suit No. 82 of 1981 seeking his impleadment and the same has been dismissed by the learned Munsif, Buxar, no illegality, irrationality or procedural impropriety can be found with the order impugned dated 21.11.2017.

6. The order impugned does not even suffer



from any jurisdictional error.

7. In that view of the matter, I see no reason to interfere with the order impugned in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2019
Transmission Date	

