

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1698 of 2019

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Md. Yusuf Ekbal @ Md. Yusuf Eqwal S/o-Md. Abdul Gani @ Abdul Gani,
R/o-Ward No. 09, Murgiyachak, P.O./P.S./District-Khagaria, Khagaria,
Khagaria Mukhya Dakghar, Bihar-851204.

... .. Petitioner/Defendant

Versus

1. Sogra Khatoon W/o Late Md. Asgar, Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
2. Md. Istekhar Alam Son of Late Md. Asgar Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
3. Md. Sarbar Son of Late Md. Asgar Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
4. Farida Khatoon, W/o Md. Najir and Daughter of te Md. Asgar Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
5. Rehana Khatoon W/o Md. Akhtar Dauther of te Md. Asgar Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
6. Kaushar Parveen, W/o Md. Altamas Daughter of te Md. Asgar. Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
7. Md. Gulzar, S/o Abba Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.

..... Respondents 1st Set/Plaintiffs

8. Md. Aasif Ekbal S/o Abdul Gani @ Abdul Gani Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
9. Md. Gyasudin Son of Haider Mian Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
10. Md. Kaiyum Son of Haider Mian Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
11. Most Jamila Khatoon Daughter of Haider Mian Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
12. Most. Safoost Khatoon Daughter of Haider Mian Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya



Dakghar, Bihar-851204.

13. Sahzadi Khatoon Daughter of Late Mistakina Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
14. Sharmila Khatoon Daughter of Late Mustakina Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
15. Md. Shahzada Son of Late Mustakina Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
16. Md. Salim Son of Late Mustakina Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.
17. Md. Sonu Son of Late Mustakina Resident of Mohalla-Murgiyachak, P.O./P.S./District-Khagaria, Khagaria, Khagaria Mukhya Dakghar, Bihar-851204.

... .. Respondents 2nd Set

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Appearance :

For the Defendant/Petitioner/: Ms. Deepika Sharma
Mr. Rajat Kr. Tiwary, Advocates.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 09-12-2019

The present petition has been filed for the following
reliefs as formulated by the defendant/petitioner.

“(i) To issue an appropriate order/direction setting aside the order dated 30.09.2019 passed by learned Additional District Judge, 2nd, Khagaria rejecting the Review Petition dated 20.04.2018 filed by the petitioner in Misc. Case No. 01/2011 which was filed by the respondents 1st against the order dated 23.03.2018.

(ii) To issue an appropriate order/direction staying the further proceeding in Misc. Case No. 01/2011 filed before the learned court of Additional District Judge, Khagaria, till the pendency of this case.



(iii) To any other relief or reliefs for which the petitioners are found entitled to in the facts and circumstances of the case."

2. Title Suit No. 24 of 1983 was filed by the plaintiffs/respondents (1st Set) for declaration of title and for declaring the sale deed dated 10.11.1981 as *null and void*. The title suit was dismissed on merit while the counter claim of the defendant/petitioner was allowed by the same judgment and decree. The plaintiffs/respondents (1st Set) filed appeal in M.T.A. No. 04/1997 which was dismissed for default, for restoration of which Misc. Case No. 01/2011 was filed. One of the plaintiffs/appellants namely Mustakina who was opposite party no. 8 in Misc. Case No. 01/2011 died during the pendency of the said case. The defendant/petitioner filed a petition for abatement upon death of the plaintiff/appellant namely Mustakina. The plaintiffs/respondents (1st Set) filed three petitions all dated 06.04.2017 for substituting the name of the deceased Mustakina with her legal heirs, for condonation of delay and for setting aside the abatement. The defendant/petitioner filed a rejoinder dated 06.04.2017 for rejecting the aforesaid three petitions. The plaintiffs/respondents (1st Set) then filed two petitions both dated 16.09.2017 requesting to keep all the aforesaid three petitions dated 06.04.2017 in abeyance and for striking off the name of deceased Mustakina from the cause title of Misc. Case No. 01/2011. Considering all the



various petitions filed by the parties, the learned court below passed an order dated 23.03.2018, *inter alia*, allowing the name of opposite party no. 8-Mustakina to be struck off and for substitution of the legal heirs in her place, by condoning the delay. Against the said order dated 23.03.2018, a review petition was filed by the defendant/petitioner which was dismissed by the impugned order dated 30.09.2019.

3. Learned counsel for the defendant/petitioner submits that the impugned order has been passed in illegal exercise of jurisdiction. The plaintiffs/respondents (1st Set) had no doubt requested in their petitions dated 06.04.2017 for setting aside the abatement and for substituting the name of the deceased Mustakina with the legal heirs, but by their subsequent petitions dated 16.09.2017 they again requested that the earlier petitions be kept in abeyance and had not pressed the same. As such the learned court below ought not to have granted a relief which had not been prayed for.

4. Heard learned counsel for the defendant/petitioner and considered the materials on record. The impugned order has been passed upon consideration of the several petitions and rejoinders filed by the parties in Misc. Case No. 01/2011 in their totality. The defendant/petitioner in his rejoinder dated 12.10.2017 had himself taken the stand that Mustakina was a necessary party and as such her name could not be struck off. It is a



matter of record that the order dated 23.03.2018 was not challenged before any higher forum rather the same has been made the subject matter of review petition which was dismissed by the impugned order. Keeping in mind the limited scope of review jurisdiction, this Court does not find any illegality or infirmity in the impugned order dated 30.09.2019 passed in Misc. Case No. 01/2011. The petition stands dismissed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.12.2019
Transmission Date	N.A.

