

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2 of 2020

Masoom Kumar, Son of Sri Bithal Yadav, resident of Mohalla Kharkhura,
Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.

... .. Petitioner/s

Versus

1. Mahendra Prasad Son of late Jhulan Bhagat, Resident of Mohalla-Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
2. Sukhari Bhagat, Son of late Gopal Bhagat, Resident of Mohalla- Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
3. Most. Malo Devi, Widow of late Bechan Bhagat, Resident of Mohalla-Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
4. Barti Devi, Widow of late Narain Bhagat, Resident of Mohalla- Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
5. Vijay Bhagat Son of late Narain Bhagat, Resident of Mohalla- Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
6. Sima Devi @ Sinku Devi, Daughter of late Narain Bhagat, Resident of Mohalla- Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
7. Sushma Devi, Daughter of late Narain Bhagat Resident of Mohalla-Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.
8. Dipa Devi, Daughter of late Narain Bhagat Resident of Mohalla- Kharkhura, Bhatta Bigha, P.S. Delha, P.O. R.S. Town, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jitendra Kishore Verma, Advocate
For the Respondent/s : Mr.Binay Krishna, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 03-02-2021

Having heard learned counsel for the petitioner,
this Court in exercise of its jurisdiction under Article 227 of the
Constitution of India is not inclined to interfere with the
impugned order dated 16.11.2019 passed in Title Suit No.26 of
2018 by the learned Sub-Judge-XIV, Gaya, more so, for the



reasons that the trial of the Title Suit instituted in the year 2018 by the plaintiff brooks no delay and the order cannot said to be wholly perverse; passed without jurisdiction; non-application of mind; and not accounted the entire attending facts and circumstances.

Vide impugned order, plaintiff's applications filed under Order XXII Rules 4 and 9 of the Code of Civil Procedure and the provision of the Limitation Act stand allowed.

The original defendant no.2 Narayan Bhagat died in the month of December, 2017, which fact, the plaintiff, as per the pleadings, learnt much after the filing of the Civil Suit and as such filed application for substitution of the names of the legal heirs with a prayer for setting aside the abatement and substituting the legal heirs in place of the original defendant no.2 Narayan Bhagat.

To some extent, learned counsel for the petitioner is correct that the order is not happily worded, though to the mind of the Court, substratum in existence is sustainable in law. From the record, it cannot be inferred that the plaintiff was aware of the death of original defendant no.2 Narayan Bhagat.

The suit relates to the dispute of land. Though the Trial Judge has held the application not to be barred by



limitation, but ought to have mentioned, specifically, the factum of abatement, which this Court, in the attending facts and circumstances, does so. The application is bona fide and maintainable, per law.

Hence, for all the aforesaid reasons, the present petition stands dismissed.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.02.2021
Transmission Date	

