

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.433 of 2018

1. Ashok Choubey son of Late Radhamohan Choubey R/o Village- Chakiya, P.O.- Chakiya, P.S. Bhagwanpur Hat, District- Siwan (legal heirs of original defendant no. 25 in the Title Partition Suit No. 88/1956)
2. Jitendra Choubey son of Late Radhamohan Choubey R/o Village- Chakiya, P.O.- Chakiya, P.S. Bhagwanpur Hat, District- Siwan (legal heirs of original defendant no. 25 in the Title Partition Suit No. 88/1956)
3. Harendra Choubey son of Late Radhamohan Choubey R/o Village- Chakiya, P.O.- Chakiya, P.S. Bhagwanpur Hat, District- Siwan (legal heirs of original defendant no. 25 in the Title Partition Suit No. 88/1956)
4. Bageshwar Pandey son of Late Devnandan Pandey R/o Village- Noniya, P.S.- Paharpur, District- East Champaran. presently resident of Village- Ahwar Sheikh, Ward no. 4, P.S.- Majhauria, District- West Champaran (legal heirs of original defendant no. 26 of the Title Partition Suit No. 88/1956)
5. Bhanu Pandey son of Late Devnandan Pandey R/o Village- Noniya, P.S.- Paharpur, District- East Champaran. presently resident of Village- Ahwar Sheikh, Ward no. 4, P.S.- Majhauria, District- West Champaran (legal heirs of original defendant no. 26 of the Title Partition Suit No. 88/1956)

... .. Petitioner/s

Versus

1. Prabhu Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
2. Maksudan Pandey minor under the guardianship of Hira Pandey, father resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
3. Janardan Pandey S/o Sarjug Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
4. Dharendra Pandey Son of Nathuni Pandey (under legal guardian of his father) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
5. Chandrika Pandey Son of Kashi Pandey (under the legal guardian of the father) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
6. Mundrika Pandey (minor) Son of Kashi Pandey (under the legal guardian of the father) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
7. Upendra Pandey minor, under the legal guardianship of Kailash Pandey, father resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
8. Jai Prakash Pandey (minor) S/o Janardan Pandey (under legal guardian of father) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
9. Atma Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.-



Sareya, District- East Champaran.

10. Jaykant Pandey S/o Late Jagat Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
11. Guli Pandey (minor) minor daughter of Late Jagat Pandey (under the guardianship of their mother Ruchita Devi) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
12. Jayanti Kumari (minor) minor daughter of Late Jagat Pandey (under the guardianship of their mother Ruchita Devi) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
13. Bachi Kumari (minor) minor daughter of Late Jagat Pandey (under the guardianship of their mother Ruchita Devi) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
14. Malu Devi D/o Singasan Pandey (since deceased), W/o Birendra Mishra resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
15. Shashi Kant Pandey minor under legal guardianship of Ganesh Pandey, father resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
16. Kodai Pandey (minor) S/o Dhanukhi Pandey (under guardianship of his father) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
17. Umesh Pandey (minor) S/o Late Ram Nihora Pandey (under guardianship of his mother) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
18. Nand Kumari Devi D/o Late Ram Nihora Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
19. Kishori Devi W/o Late Ram Nihora Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
20. Tej Bahadur Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
21. Shambhu Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
22. Satruhan Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
23. Bachha Pandey (minor) Son of Rajendra Pandey (under guardianship of Rajendra Pandey, father and guardian), resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
24. Madan Pandey S/o Banarash Pandey @ Bajar Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
25. Bijay Bahadur Pandey minor under the guardianship of Most. Birla Kuar mother and guardian resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
26. Harindra Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.



27. Birendra Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
28. Mohan Pandey minor son of Rajendra Pandey resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.
29. Mahesh Pandey minor S/o Banaras Pandey (under the guardianship of Mohan Pandey) resident of Village- Sareya Tappa, P.S.- Govindganj, P.O.- Sareya, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 18-08-2022

I.A. No. 6819 of 2018:-

This Interlocutory Application has been filed for expunging the name of Petitioner No. 4 and for substituting his legal heirs and representatives as Petitioner Nos. 4(i) and 4(ii) whose details are mentioned in paragraph-6 of this Interlocutory Application. The Petitioner No. 4 died on 25.6.2018.

Taking into consideration the nature of prayer made in the Interlocutory Application, the same is allowed and the Petitioner No. 4 is directed to be deleted from the array of the parties and his legal heirs and representative are directed to be substituted in his place, details of whom, are mentioned in paragraph-6 of the Interlocutory Application.

Civil Miscellaneous 433 of 2018:-



By the impugned order dated 05.12.2017 the petition under Order XXI, Rule 22 of Civil Procedure Code filed by the petitioners who happens to be the legal heirs of original defendant Nos. 25 and 26 of the Title Suit, has been dismissed on the ground that the original defendant Nos. 25 and 26 i.e. Rajpati Devi and Rampati Devi did not participate in a compromise held in First Appeal No. 53 of 1960 and ex-pare decree was prepared against them. As such, the petitioners cannot be substituted in the place of the original defendant Nos. 25 and 26, particularly when the final decree has been prepared on 23.11.1971 and the delivery of possession has been given to all the parties. The suit for partition bearing Title Partition Suit No. 88 of 1956 was filed in which the daughters of Yamuna Pandey namely, Rajpati Devi and Rampati Devi were made defendant Nos. 25 and 26. The suit was decreed vide Judgment and decree dated 29.09.1959 and First Appeal was preferred before this Court bearing First Appeal No. 53 of 1960 by some of the co-sharers.

From the impugned order it appears that the First Appeal No. 53 of 1960 was decided on 19.9.1966 and



23.11.1971 final decree was prepared and, thereafter, the properties were allotted and delivery of possession was given to the parties in Execution Case No. 16 of 1972 on 26.11.1977. After everything was finalized, these petitioners claiming to be the heirs of the descendants of the original defendant Nos. 25 and 26, filed a petition dated 25.03.2015 to substitute their names in place of original defendant Nos. 25 and 26 in the final decree.

Learned counsel for the petitioners submits that original defendant Nos. 25 and 26 did not participate in the compromise recorded in First Appeal No. 53 of 1960 before this Court and ex-parte decree was prepared for defendant Nos. 25 and 26. As such, the petitioners being the heirs of the original defendant Nos. 25 and 26 can be substituted as defendant in the final decree under the provisions of Order XXI, Rule 22 of Civil Procedure Code.

I have heard learned counsel for the petitioners, admittedly the suit for partition was filed in 1956 and First Appeal No. 53 of 1960 was filed before this Court arising out of the Title Partition Suit No. 88/1956. The judgment and decree of the suit also got finalized in the year 1966 and



final decree was prepared in 1971 and by Execution Case No. 16 of 1972, the final decree was executed in favour of all the parties and they have got their respective shares in 1977. After a lapse of 45-46 years from the date of execution of the final decree, the petitioners have filed this application for substitution of their names in the final decree in place of original defendant Nos. 25 and 26.

Taking into consideration the reasoning given by the learned court below and the fact that after lapse of about 45-46 years, the petition for substitution in the final decree has been filed and the fact that the Provision of Order XXI, Rule 22 is not attracted in the facts of the case, in my opinion, there is no illegality and jurisdictional error in the impugned order.

Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

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