

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.956 of 2018

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Gyandeo Sah Son of Rupelal Sah @ Ruchlal Sah, resident of Village- Amba
P.O. Amba, P.S. Alauli, District- Khagaria.

... .. Petitioner/s

Versus

1. Jagtarni Devi @ Umda Devi Wife of Late Jagdeo Sah, Resident of Village- Amba, P.S.- Alauli, District- Khagaria.
2. Lalo Devi, Wife of Jawahar Sah, resident of Icharua, P.S. Alauli, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Podddar Suresh Gandhi
For the Respondent/s	:	Mr. Dronacharya, Sr. Adv. Mr.Arghesh Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 17-10-2022 Heard learned Counsel for the petitioner and learned
Senior Counsel for the respondents.

The petitioner has challenged the order, dated 30.01.2017, passed by learned Munsif, Khagaria, in Title Suit No. 17 of 2010, by which the petition filed by the petitioner, under Order XXII Rule 5 read with Section 151 of the Code of Civil Procedure, has been rejected.

Learned Counsel for the petitioner submits that the petitioner has been substituted along with others as heirs of original defendant no. 1, Ruchlal Sah. He further submits that one Lalo Devi has also been substituted in the suit as one of the



heirs of original defendant no. 1, but according to the petitioner, she is not the daughter of the original defendant no. 1; rather, she is the daughter of Jagdeo Sah, the elder brother of the original defendant no. 1. Thus, the submission is that the learned Trial Court, without holding any enquiry, as required under Order XXII Rule 5 of the Code of Civil Procedure, has allowed the substitution of Lalo Devi, as one of the heirs of original defendant no. 1.

Learned Senior Counsel for the respondents submits that the petitioner has filed this application challenging the impugned order in abuse of the process of court inasmuch as by order, dated 21.01.2016, Lalo Devi was substituted as one of the heirs of the original defendant no. 1 and that order was challenged by the present petitioner before this Court by filing CWJC No. 5508 of 2016, which was dismissed by this Court, vide order, dated 26.07.2016, holding that no prejudice would cause to the petitioner and it is not a case of exercise of supervisory jurisdiction by this Court. He further submits that once the order of substitution has been affirmed by this Court, a frivolous petition has been filed by the petitioner, under Order XXII Rule 5 of the Code of Civil Procedure, which is not maintainable and the learned Trial Court, by the impugned



order, has rightly refused to exercise its jurisdiction on the ground that earlier against the substitution order, the petitioner had moved this Court and the said application was dismissed by this Court.

Having heard learned Counsel for the parties concerned and upon perusal of the materials available on record, I am satisfied that against the substitution of Lalo Devi, the petitioner had approached this Court in CWJC No. 5508 of 2016 and the writ petition filed by the petitioner was dismissed by this Court. It appears that after dismissal of the writ petition filed by the petitioner against the substitution of Lalo Devi, the petitioner again filed a petition before the learned Trial Court in abuse of the process of court, for holding enquiry regarding Lalo Devi, under Order XXII Rule 5 of the Code of Civil Procedure, which was rejected by the learned Trial Court by the impugned order and again the petitioner has approached this Court by filing the present application challenging the impugned order, which, in my opinion, has no infirmity and the learned Trial Court has rightly exercised its jurisdiction.

This Court is also of the opinion that in the abuse of the process of court, the petitioner has filed a frivolous petition. Accordingly, this application is dismissed with cost of Rs. 500/-



to be paid by the petitioner.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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