

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.77 of 2021

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Md. Sabir S/o Md. Farid Alam Resident of Mohalla - Choti Masjid,
Maroofganj, P.S. -Kotwali, Gaya.

... .. Petitioner

Versus

1. Md. Sahabuddin S/o Md. Shamshuddin resident of Mohalla - Kathokar,
Talab, Near Mir Safayat Road, P.S. - Kotwali, District - Gaya.
2. Md. Musa S/o Md. Samshuddin resident of Mohalla - Kathokar, Talab, Near
Mir Safayat Road, P.S. - Kotwali, District - Gaya.
3. Md. Shahnawaz S/o Md. Samshuddin resident of Mohalla - Kathokar, Talab,
Near Mir Safayat Road, P.S. - Kotwali, District - Gaya.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ravindra Kumar Sinha
For the Respondent/s : Mr.Radha Mohan Pandey

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

5 31-03-2022 Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

During proceeding of Execution Case No. 03 of 2018,
petition dated 05.01.2019 was filed on behalf of the petitioners
the judgment debtors, to dismiss the execution case on the
ground that during the pendency of the suit plaintiff No. 1, Md.
Salimuddin died but no steps were taken for substitution of his
legal heirs or for deletion of his name.

The application of judgment debtor was controverted
by the decree holder by way of his rejoinder dated 07.08.2019 in
which it has been mentioned that the legal heirs i.e. four



brothers of Md. Salimuddin were already on record in Title Suit No. 13 of 2012. During the pendency of suit No. 13 of 2012, after the death of Md. Salimuddin, a petition was filed to delete his name from the plaint and there was no question for substitution as his legal heirs were already on the record.

This petition, was allowed by the learned trial court vide order dated 7th April, 2016, but due to clerical mistake the name of the deceased Md. Salimuddin remained undeleted.

During the course of argument, it was brought to the notice of the Court that first appeal against the judgment and decree of trial court has been dismissed and second appeal has been preferred but as yet it has not been admitted and petition for stay presented on behalf of the petitioners has been rejected by the second appellate court.

Learned counsel for the petitioner has submitted that the learned executing court committed illegality in not dismissing the execution proceeding on the ground of death of plaintiff No. 1.

The order of learned executing court is well reasoned, in which he has stated that execution cannot be dismissed only on the ground that the name of the deceased plaintiff No. 1 is not deleted by the office clerk of the court by which judgment



and decree was passed. The name of the deceased plaintiff No. 1 was already ordered to be deleted vide order dated 7th April, 2016 but it has not been incorporated due to clerical mistake. I do not find that this fact goes to the root of the matter.

The impugned order need not to be interfered. Accordingly, this civil miscellaneous petition is dismissed.

(Nawneet Kumar Pandey, J)

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