

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.402 of 2021

Vaibhaw Kumar Agrawal Son of Shri Shivshankar Jhunhunwala Resident of Agarwal House, Sowa Babu Chowk, Lal Bazar, P.S. Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. Smt. Geeta Devi wife of Late Vijay Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
2. Arun Kumar Jhunhunwala Son of Late Vijay Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
3. Mukesh Kumar Jhunhunwala Son of Late Vijay Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
4. Bal Kishan Jhunhunwala Son of Late Shushil Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
5. Bal Mukund Jhunhunwala Son of Late Shushil Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
6. Smt. Suman Devi wife of Late Shushil Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
7. Smt. Usha Devi wife of Late Lokesh Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
8. Kushal Kumar Jhunhunwala Son of Late Lokesh Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
9. Smt. Aruna Devi wife of Late Deoki Nandan Mandhokiya and daughter of Late Vijay Kumar Jhunhunwala Resident of Barharwa, P.S. Barharwa, District Sahebganj (Jharkhand).
10. Smt. Anshu Devi wife of Manish and daughter of Late Vijay Kumar Jhunhunwala Resident of Hasanpur Bazar, P.S. Samastipur, District Samastipur.
11. Smt. Komal Devi wife of Gaurav Sultania and daughter of Late Lokesh Kumar Jhunhunwala Resident of Sikandarpur, P.O. and P.S. Sikandarpur, District Muzaffarpur.
12. Pramod Kumar Jhunhunwala Son of Late Babu Durga Dutta @ Durga Prasad Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
13. Ajay Kumar Jhunhunwala Son of Late Babu Durga Dutta @ Durga Prasad Resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah,



District West Champaran.

14. Smt. Shakuntala Devi wife of Shri Raj Kumar Jain, daughter of Late Durga Dutta Resident of Gaushala Road, P.O. and P.S. Bhagalpur, District Bhagalpur.
15. Anup Kumar Agarwal Son of Late Shambhu Prasad Agarwal @ Jhunjhunwala, natural Son of Late Bishambhar Prasad Jhunjhunwala and adopted Son of Late Madan Lal Agarwal, Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
16. Smt. Santosh Devi Jhunjhunwala wife of Uma Shankar Jhunjhunwala, Son of Late Bishambhar Pd. Jhunjhunwala, Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
17. Rohit Kumar Jhunjhunwala Son of Late Uma Shankar Jhunjhunwala, Son of Late Bishambhar Prasad Jhunjhunwala Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
18. Lalit Kumar Jhunjhunwala Son of Late Uma Shankar Jhunjhunwala, Son of Late Bishambhar Prasad Jhunjhunwala Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
19. Sheo Shankar Jhunjhunwala son of Late Bishambhar Prasad Jhunjhunwala Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
20. Smt. Sulochna Devi wife of Late Gauri Shankar Prasad Chowdhary and daughter of Late Bishambhar Prasad Jhunjhunwala Resident of Near Machodari Park, Varanasi, Kochari Gali, P.O. and District- Varanasi.
21. Sunil Kumar Jhunjhunwala alias Giga son of Late SatyaNarain Prasad Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
22. Anil Kumar Jhunjhunwala alias Chhote son of Late Satya Narain Prasad Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
23. Ashok Kumar Jhunjhunwala son of Late Satya Narain Prasad Resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, District West Champaran.
24. Kiran Devi wife of Shree Prem Kumar Chowdhary and Son of Late Satya Narain Prasad Resident of Engineers Colony, Flat No. 67, Nr. PGI South City, P.S. and District Lucknow, U.P.
25. Sunila Jhunjhunwala daughter of Late Satya NarainPrasad Jhunjhunwala Resident of Lal Bazaar, Near Hazarimal Dharmshala, Surya Sadan, P.O. and P.S. Bettiah, District Champaran.
26. Shankar Lal @ Shankar Prasad Jhunjhunwala Son of Late Balbhadra Prasad Resident of Lal Bazaar, Near Hazarimal Dharmshala, Surya Sadan, P.O. and P.S. Bettiah, District Champaran.
27. Shambhu Prasad Agarwal son of Late Radha Krishna Dokania Resident of



- Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District- Bhagalpur.
28. Ashok Kumar Agarwal son of Late Radha Krishna Dokania Resident of Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District- Bhagalpur.
 29. Bihari Agarwal son of Late Radha Krishna Dokania Resident of Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District- Bhagalpur.
 30. Parvati Devi wife of Ramavatar Bagaria and daughter of Late Balbhadra Prasad resident of Annappurna Textiles, Handia Patti, Near Inara, P.O. and P.S. and District- Bhagalpur.
 31. Kailash Prasad @ Kailash Kumar Jhunjhunwala son of Niranjnlal Jhunjhunwala Resident of 23/F, Ramlaldatta Road, P.O. and P.S. Uttarpara, District- Hooghli, Kolkata.
 32. Ashok Kumar Jhunjhunwala son of Late Niranjnlal Jhunjhunwala Resident of Mohalla Lal Bazzar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
 33. Smt. Sharda Devi wife of Late Devi Datta Saraya and daughter of Late Niraanjanlal Resident of Rani Ganj, Near Kali Mandir, Bara Bazzar, District Raniganj, West Bengal.
 34. Gaytri Devi wife of Late Ramavatar Prasad Jhunjhunwala Resident of 28, Shriram Thung Road, (Fulkaria Raod), Banda Ghat, Salakia, District Howrah, West Bengal.
 35. Pradeep Kumar Jhunjhunwala Son of Ramavatar Prasad Jhunjhunwala Resident of 28, Shriram Thung Road, (Fulkaria Raod), Banda Ghat, Salakia, District Howrah, West Bengal.
 36. Deelip Kumar Jhunjhunwala Son of Ramavatar Prasad Jhunjhunwala Resident of 28, Shriram Thung Road, (Fulkaria Raod), Banda Ghat, Salakia, District Howrah, West Bengal.
 37. Rajesh Kumar Jhunjhunwala son of Ramavatar Prasad Jhunjhunwala Resident of 28, Shriram Thung Road, (Fulkaria Raod), Banda Ghat, Salakia, District Howrah, West Bengal.
 38. Smt. Rajkumari Devi wife of Late Bharat Kumar Jhunjhunwala Advocate, Resident of Lal Bazaar, P.O. and P.S. Bettiah, District- West Champaran.
 39. Dr. Parag Kumar son of Bharat Kumar Jhunjhunwala Resident of Sector 15-A, Plot No. 486, Chandigarh, Haryana.
 40. Bandana Devi Jhunjhunwala wife of Late Krishna Kumar alias Raju, son of Late Jagmohan Prasad Resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
 41. Abhishek Kumar Jhunjhunwala son of Late Krishna Kumar alias Raju, son of Late Jagmohan Prasad Resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
 42. Amit Kumar Jhunjhunwala son of Late Krishna Kumar alias Raju, son of Late Jagmohan Prasad Resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.



43. Prem Kumar alias Pappu son of Late Jagmohan Prasad Resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
44. Smt. Chanchal Devi wife of Dinesh Kumar Untwalia, daughter of Late Jagmohan Prasad, Resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S. Bettiah, District West Champaran.
45. Mohan Prasad son of Late Bhura Mall Resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
46. Om Prakash son of late Buru Mall Resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
47. Surendra Sah son of late Ramchandra Prasad Resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
48. Ajay Sah son of late Ramchandra Prasad Resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
49. Vijay Sah son of late Ramchandra Prasad Resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
50. Rajeev Sah son of late Ramchandra Prasad Resident of Narkatiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
51. Baldeo Prasad son of late Sukhdeo Prasad Resident of Narkatiaganj Market, P.O. and P.S. Shikarpur, Distt. West Champaran.
52. Sanjay Kumar Jhunjhunwala adopted son of Late Hari Prasad Jhunjhunwala Resident of Mohalla Lal Bazar, Hazarimal Dharamshala Road, P.O. and P.S. Bettiah, Distt. West Champaran.
53. Rajesh Kumar Jhunjhunwala son of Late Madan Lal Jhunjhunwala Resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah District West Champaran.
54. Mohanlal Jhunjhunwala son of Late Tularam Resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah District West Champaran.
55. Dr. Sohan Lal Jhunjhunwala son of Late Tularam Resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah District West Champaran.
56. Smt. Sakuntala Devi Jhunjhunwala wife of Late Ram Jhunjhunwala Resident of Mohalla- Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah District West Champaran.
57. Ravi Kumar Jhunjhunwala son of Late Ram Jhunjhunwala Resident of Mohalla- Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah District West Champaran.
58. Shyam Jhunjhunwala son of Late Govind Prasad Jhunjhunwala Resident of Mohalla- Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah District West Champaran.
59. Krishna Jhunjhunwala son of Late Govind Prasad Jhunjhunwala Resident of Mohalla- Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah District West Champaran.
60. Mahesh Jhunjhunwala son of Late Govind Prasad Jhunjhunwala Resident of Mohalla- Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah District West Champaran.



61. Kishori Giri Manager Giri son of Late Badari Giri alias Badri Giri Resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia, District West Champaran.
62. Manger Giri son of Late Badari Giri alias Badri Giri Resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia, District West Champaran.
63. Sanjay Giri son of Late Badari Giri alias Badri Giri Resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia, District West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate
Mr.Mohit Agarwal
Mr Akshant Agarwal
Mr. Lokesh Kumar

For Respondent no.16 to 19 & 26 Mrs. Priya Gupta
Mrs. A. Maitin

For Respondent nos. 1 to 14
and 21 to 25 Mr. Rajendra Narain, Sr. Advocate
Ms. Anju Narain
Mr. Anant Kumar Sinha
Mr. Umesh Kumar Roy

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

CAV ORDER

5 22-06-2022 Learned counsel for the petitioner is directed to

remove all the defects pointed out by the Stamp Reporter within

one month.

Being aggrieved by the impugned order dated
04.03.2020, passed by the learned Sub Judge-XI, Motihari, East
Champran in Partition Suit No. 562 of 2009, whereby the
petitioner Vaibhaw Kumar Agarwal was substituted as one of
the legal heirs of late Uma Shankar Jhunhunwala, defendant
no.2, who died on 17.10.2019, the present civil miscellaneous
petition has been filed.



The learned counsel for the petitioner has submitted that the petitioner Vaibhaw Kumar Agarwal was the natural son of late Uma Shankar Jhunjunwala, defendant no.2, and Smt. Santosh Devi Jhunjunwala, respondent no.16, the wife of late Uma Shankar Jhunjunwala. The natural father of the petitioner late Uma Shankar Jhunjunwala and his adoptive father Sheo Shankar Jhunjunwala (respondent no.19) are own brothers. The petitioner was given in adoption to his adoptive father by his biological parents after performing all the religious rituals when the petitioner was minor. After adoption, all the relation of the petitioner was severed from his biological family and he is the family member of his adoptive father Sheo Shankar Jhunjunwal (respondent no.19). Since the petitioner was given in adoption to respondent no.19, the name of respondent no.19 has been entered as his father's name in all the government documents and records of the petitioner, such as Voter ID Card, PAN Card, Passport, Aadhar Card and educational qualification. Late Sri Uma Shankar Jhunjunwala left for heavenly abode on 17.10.2019, leaving behind his wife namely Smt. Santosh Devi (respondent no.16) and his two sons namely Rohit Kumar and Lalit Kumar, respondent nos. 17 and 18, respectively, as his Class-1 legal heirs.



It has further been submitted by the learned counsel for the petitioner that only with a view to harass the petitioner, the plaintiffs have mentioned the name of the petitioner in the substitution petition amongst the widow and two sons of late Uma Shankar Jhunjhunwala. He has submitted further that his adoptive father Sri Sheo Shankar Jhunjhunwal has filed counter affidavit in this case and he himself has admitted that the petitioner is his adopted son. Similarly, counter affidavit has also been filed by respondent no.16, the natural mother of the petitioner and she has also stated that the petitioner was given to Sri Sheo Shankar Jhunjhunwala (respondent no.19) in adoption. As such, it is the admitted fact that the petitioner is the adopted son of Sri Sheo Shankar Jhunjhunwala. The learned counsel has also submitted that the plaintiffs/respondents have no concern with the said adoption, as such, they have no locus to challenge the deed of adoption when it was accepted by his adoptive father. He has next submitted that the learned court below has committed gross illegality in holding that even if the petitioner is deemed to be adopted son of Sri Sheo Shankar Jhunjhunwala, he is not deprived of his rights accrued in him from the date of his birth and on this misconceived logic, the learned trial court has directed the petitioner to be substituted as one of the legal



heirs of late Uma Shankar Jhunjhunwala.

The learned counsel for the plaintiffs-respondents has submitted that the deed of adoption should have been filed to show that the petitioner is adopted son of Sri Sheo Shankar Jhunjhunwala.

The person who has taken the petitioner in adoption has admitted the fact that he has taken him in adoption. The natural mother of the petitioner has also stated in her affidavit that the petitioner was given in adoption to Sri Sheo Shankar Jhunjhunwala (respondent no.19). The plaintiffs-respondents are not concerned with the family matters of the petitioner, his adoptive father and biological father. They have no locus to challenge the adoption when the adoption is admitted by the adoptive father and biological mother of the petitioner.

Section 12 of the Hindu Adoptions and Maintenance Act, 1956 states that an adopted child from the date of his adoption will be deemed to be the child of his adoptive parents and all his ties with the natural family will be severed.

In the instant case, the petitioner himself does not claim his right in the property of natural father. As such, his substitution flouting his will and wishes was not in accordance with law. More so, when it cannot be done as per aspiration of



of Section 12 of the Hindu Adoption and Maintenance Act, 1956.

On the basis of above-mentioned observation, this civil miscellaneous petition is allowed and the impugned order dated 04.03.2020, passed by the learned Sub Judge-XI, Motihari, East Champaran in Partition Suit No. 562 of 2009, is amended to the extent that the substitution of the petitioner as one of the legal heirs of late Uma Shankar Jhunhunwala is struck off. The other three legal heirs, two sons and the widow Santosh Devi shall continue as substituted legal heirs of late Uma Shankar Jhunhunwala.

Office shall ensure that all the defects are removed by the petitioner within the stipulated time provided hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

HR/-

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