

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1078 of 2018

1. Vimal Kumar Pandey
2. Ashok Kumar Pandey. Both Sons of Late Badri Narayan Pandey, Resident of Girja Bhawan, New Colony, Dak Bungalow Road, P.S. Bettiah, District West Champaran, Bihar.
3. Baby Punam Pathak @ Punam Pathak, Daughter of Late Badri Narayan Pandey, Wife of Sri Birendra Kumar Pathak, Resident of Daudpur Kothi, Village Brahmpura, P.S. Brahmpura, District-Muzaffarpur, Bihar.
4. Anjana Tiwari, Daughter of Late Badri Narayan Pandey, Wife of Sri Rajnish Tiwari, Resident of Village-Naubatpur Tiwari Chak, P.S. Naubatpur, District Patna, Bihar.

... .. Petitioner/s

Versus

1. Hellen Fransis @ Prabha Pandey said to Be Wife of Late Badri Narayan Pandey.
2. Abhishek Kumar Pandey, Said to Be Son of Late Badri Narayan Pandey. Both Resident of Village-Bishunpur, Nanahkar, P.S. Harshidhi, District East Champaran, Bihar. At Present residing at Kamal Nath Nagar, Ward No. 23, P.S. Bettiah, District West Champaran, Bihar.
3. Sairal Surbhi Wife of Amit Prasad.
4. Nanshi Khushbu, Wife of Sabkar Henery. Both Resident of Village-Kamal Nath Nagar, Ward No. 23, P.S. Bettiah, District West Champaran. Bihar.
5. Suresh Narayan Pandey, Son of Late Laxmi Pandey, Resident of Bishunpur, Nanjkar, P.S. Harshidhi, District-East Champaran.
6. Sugriv Kumar Pandey, Son of Late Laxmi Narayan Pandey, Resident of Bishunpur, Nanhkar, P.S. Harshidhi, District East Champaran, at Present Assistant Government Polytechnic, Ranchi Church Road, Ranchi Jharkhandi.
7. Radhika Devi, Wife of Late Laxmi Pandey, Resident of Bishunpur, Nanhkar P.S. Harshidhi, District-East Champaran.
8. Suman Devi, Daughter of Late Laxmi Pandey, Wife of Manoj Mishra, Resident of Jogiyar, Hardiya Chowk, Areraj P.S. Areraj, Distirct-East Champaran.
9. Prasidh Narayan Pandey.
10. Sudisht Narayan Pandey. Both Sons of Late Ram, Chandra Pandey.
11. Bindhyachal Pandey, Son of Late Indradeo Pandey. All Resident of Bishunpur, Nanhkar, P.S. Harshidhi, District East Champaran.
12. Diwakar Upadhyay,
13. Dinesh Upadhyay.
14. Mankeshwar Upadhyay.
15. Akhileshwar Upadhyay. All Sons of Late Kamal Upadhyay All Resident of



Village-Pipra Bazar, P.O. Pipra, P.S. Govindganj, District East Champaran.

16. Smt. Ekawali Devi, Daughter of Late Kamal Upadhyay, Wife of Vinay Kumar Shukla, Resident of Village-Mamrakha, Khajuriya, P.S. Malahi, District East Champaran.
17. Chhema Devi, Daughter of Late Kamal Upadhyay, Wife of Shyam Bihar Tiwary, Resident of Village-Matkar Chapra Bahash, P.S. Sugauli, District East Champaran.
18. Sangita Devi, Wife of Rajesh Mishra, Daughter of Late Kamal Upadhyay Resident of Village-Bhawanipur, P.S. Govindganj, District West Champaran.
19. Kailash Pandey, Son of Late Daroga Pandey, Resident of Belhi, Sirni, P.S. Malahi, District East Champaran.
20. Siyapati Devi, Daughter of Indra Pandey, Wife of Ram Chandra Tiwari, Resident of Village-Bhadaper Dariyapur, P.S. Harsidhi, District East Champaran.
21. Prem Kanti Wife of Raj Narayan Mishra, Resident of Village-Jitwarpur, P.S. Govindpur, District-East Champaran.
22. Ram Chandra Tiwari, Son of Late Ramawatar Tiwari, Resident of Village-Noniya, Tiwari Tola, P.S. Paharpur, District East Champaran.
23. Ram Uday Pandey, Son of Late Mahavir Pandey, Resident of Ghusiyarh, P.S. Govindganj, District-East Champaran.
24. Rubi Kumari Daughter of Ram Uday Pandey, Wife of Tarun Mishra, Resident of Village-Pannapur, P.S. Harsidhi, District-East Champaran,
25. Rinki Kumari Daughter of Ram Uday Pandey, Wife of Pramod Mishra, Resident of Village-Kauaha, P.S. Govindganj, District East Champaran.
26. Nilam Kumari, Daughter of Ram Uday Pandey, Wife of Pawan Kumar Tiwari, Resident of Village-Mamrakha, P.S. Malahi, District East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. Rajeev Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

14 26-06-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed against the order dated 20.04.2018 passed by learned Sub Judge, Areraj, East Champaran in Partition Suit No. 226 of 2006 to the extent by which the learned Court below has allowed the



petition dated 18.06.2016 filed on behalf of respondent Nos. 1 to 4 under Order 22 Rule 3 of C.P.C.

3. Learned counsel for the petitioners submits that petitioners are aggrieved by the part of impugned order passed on the application dated 18.06.2016 (Annexure -3) filed under Order 1 Rule 10 read with Order 22 Rule 3 C.P.C. by which respondent Nos. 1 to 4 have claimed themselves as third wife, the son and daughters of deceased Badri Narayan Pandey respectively to be substituted also in his place. The said application was contested by the petitioners by filing the rejoinder dated 22.10.2016 in which they have specifically stated that the deceased Badri Narayan Pandey had not solemnized his third marriage with the respondent No. 1. He has submitted that there is a contest with respect to substitution of respondent Nos. 1 to 4 as heirs / legal representatives of the deceased then it is mandatory for the Court to comply with the procedure given in Rule 5 of Order 22 C.P.C. but the learned trial Court without giving any findings allowed the said substitution application. He has further submitted that the Court has passed the said order on the ground that defendants / petitioners have accepted the third marriage of deceased ignoring that the said application was contested and the



petitioners have never conceded the said plea of respondent Nos. 1 to 4. He further submits that since on the question of heirs / legal representatives, there was dispute accordingly, the Court has to comply with the provision of Rule 5 of Order 22. In this regard, he has referred and relied on the Judgment of Hon'ble Supreme Court in the case of **Jaladi Suguna (D) Th. Lrs. Vs. Satya Sai Central Trust and Ors.** reported in **2008 (8) SCC 521** and in the case of **Mahant Satyanand @ Ramjee Singh Vs. Shyam Lal Chauhan and Ors.** reported in **2018 (18) SCC 485**.

4. On the other hand, learned counsel for the respondents submits that respondent No. 1 is legally wedded wife of deceased Badri Narayan Pandey and respondent Nos. 2 to 4 are their son and daughters respectively and for the same they have the valid documents and they have produced the said documents before the Court concerned. He has further submitted that provision under Rule 5 of Order 22 C.P.C. is summary in nature and the Court has rightly passed the said order and there is no requirement of interference by this Court in its supervisory jurisdiction.

5. Having heard the learned counsel for the parties and on perusal of the record, it appears that after death of



original plaintiff, namely, Badri Narayan Pandey who died on 10.06.2015 and after his death his heirs / legal representatives Vimal Kumar Pandey (Petitioner No. 1), Ashok Kumar Pandey (Petitioner No. 2), Baby Poonam Pathak (Petitioner No. 3) and Anjana Tiwari (Petitioner No. 4) filed an application on 09.07.2015 under Order 1 Rule 10 and Order 22 Rule 3 of C.P.C. for bringing them as legal heirs which was not contested and the same was allowed by the learned Court below and later on another application dated 18.06.2016 under Order 22 Rule 3 of the C.P.C. was filed on behalf of the respondent Nos. 1 to 4.

6. Learned counsel for the respondents submits that by the impugned order dated 20.04.2018 the application of the petitioners under Order 1 Rule 10 and Order 22 Rule 3 C.P.C. was also allowed. Accordingly, the same may also be set aside for non-compliance of provision of Rule 5 of Order 22 and the same may be decided in separate miscellaneous application.

7. Learned counsel for the petitioners submits that it is not in dispute that petitioners are the son and daughter of deceased Badri Narayan Pandey and there is no objection to the said petition and it is the admitted fact that they are the heirs / legal representatives of the petitioners. Accordingly, there is no requirement for determination whether petitioners are heirs /



legal representatives of the deceased Badri Narayan Pandey or not.

8. Accordingly, this Civil Miscellaneous application is allowed and the impugned order dated 20.04.2018 is set aside to the extent of decision / order on application dated 18.06.2016 of respondent Nos. 1 to 4.

9. Learned trial Court is directed to decide the said application dated 18.06.2016 filed by respondent Nos. 1 to 4 under Order 22 Rule 3 C.P.C. afresh in accordance with law as stated above expeditiously and both the parties are directed to cooperate the trial Court in disposal of the said application.

(Sunil Dutta Mishra, J)

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