

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.140 of 2019

1. Manoj Kumar and Ors Son of Late Mohan Sah All Resident of Mohalla Kanhauliganj, P.O.-Ramna, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
2. Vijay Kumar Son of Late Mohan Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur
3. Ajay Kumar Son of Late Mohan S ah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur
4. Kiran Devi @ Kiran Gupta W/o, Dinesh Gupata All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur
5. Anjali Devi W/o, Pankaj Kumar @ Pankaj All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur
6. Chanda Kumari D/o Late Mohan Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur
7. Sunita Devi W/o Late Mohan Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Hathi Chowk, Muzaffarpur P.O.-Ramna, P.S.-Mithanpura, Munsifi Muzaffarpura, Munsifi Muzaffarpur East, District Muzaffarpur

... .. Petitioner/s

Versus

1. Ram Babu Sah Son of Late Ram Baran Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
2. Brij Mohan Sah @ Krishna Sah Son of Late Satnarayan Sah All are Resident of Mohalla-Kanhauliganj, Chakbasu, Hathi Chwok, P.O.-Rama, P.S.-Mithanpura, Munsifi Muzaffarpur East District-Muzaffarpur
3. Geeta Devi Wife of Sri Brij Mohan Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
4. Chuna Sah @ Raman Sah Son of Late Hareram Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
5. Dinesh Sah @ Langra Son of Late Hareram Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur



6. Rajesh Sah Son of Late Hareram Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
7. Umesh Sah Son of Late Rachandra Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
8. Bhola Sah Son of Late Ramchandra Sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur
9. Lal Babu Sah Son of Ramchandra sah All are Resident of Mohalla Kanhauliganj, Chakbasu, Hathi Chakbasu, Hathi Chowk, P.O.-Rama, P.S.-Mithanpura, Munsif Muzaffarpur East, District Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kr. Chaudhary, Sr. Advocate Dr. Mahtab Ahmad, Advocate Mr. Akshansh Ankit, Advocate
For the Respondent/s	:	Mr. Prabhakar Nath Rai, Advocate Mr. Mukund Mohan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 01-09-2023 Heard the parties.

In view of the Interlocutory Application No. 01 of 2023, service of notice on respondent nos. 3 and 9 is validly accepted.

I.A. No. 02 of 2023

2. The present interlocutory application has been filed for substitution of heirs and legal representatives of Defendant no. 1 (Ram Babu Sah) who died during the pendency of the present application.

3. For the reasons mentioned in the interlocutory application, it is allowed. Let the heirs and legal representatives



of the Defendant no. 1 as mentioned in paragraph 2 thereof, be substituted in his place and the name of the sole respondent be expunged from the array of the parties.

4. Mr. Mukund Mohan Jha, learned Advocate had earlier appeared on behalf of Defendant no. 1 has accepted the notice on behalf of substituted heirs of Defendant no. 1 and submits that he will file Vakalatnama on behalf of substituted heirs of Defendant no. 1.

5. The present application has been filed for quashing of order dated 30.07.2018 passed by learned Execution Munsif, Muzaffarpur in Title Suit No. 87 of 2008 by which learned Munsif has closed the evidence of the petitioner on the ground that plaintiff was not appearing regularly.

6. Learned Senior counsel for the petitioner has submitted that the court below was vacant for about three years and therefore, petitioner/plaintiff could not do necessary *pairvi* in the aforesaid suit after joining of the Presiding Officer. He further submits that the present application may be allowed in the interest of justice.

7. Learned counsel for the respondents submits that plaintiff/petitioner has knowingly abandoned the said suit and therefore, the evidence has rightly been closed.



8. I have considered the submissions of the parties and also perused the materials available on record. This Court is of the view that the suit should be decided on contest and the plaintiff should be allowed to lead evidence in the interest of justice.

9. In view of the above, this application is allowed. The impugned order dated 30.07.2018 passed by learned Execution Munsif, Muzaffarpur in Title Suit No. 87 of 2008 is hereby quashed in the interest of justice.

10. Since the suit is of 2008, the Execution Munsif, Muzaffarpur is directed to conclude the same within a year of the receipt/communication of a copy of this order without giving unnecessary adjournment to either of the parties. The Execution Munsif, Muzaffarpur will proceed *ex parte* against non-cooperating party.

11. With the aforesaid observation and direction, this application is disposed of.

(Sandeep Kumar, J)

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