

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1298 of 2018

Chitrnanjan Kumar Singh Son of late Gorakh Nath Singh Resident of Mohalla-Boring Canal Road, Police Station- Kotwali, Post Office- G.P.O. District-Patna.

... .. Petitioner/s

Versus

1. Smt. Asha Singh Daughter of late Gorakhnath Singh and Wife of Shyam Krishna Singh Bigan Resident of Mohalla-Anandpuri, Police Station- Sri Krishnapuri, District- Patna.
2. Sri Swaminath Singh under the guardianship of his Son Tushant Singh, Well wisher appointed guardian by the Court of District and Sessions Judge, Patna
3. Premranjan Singh Son of late Gorakh Nath Singh All Residents of Mohalla-Boring Canal Road, Police Station- Kotwali, Post Office- G.P.O., District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 25-04-2023

No one appeared on behalf of the respondents despite valid service of notice on them and sufficient opportunities given for their appearance.

2. Heard Mr. J.S. Arora, learned senior counsel for the petitioner.

3. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 17.03.2018 passed in Title Partition Suit No. 467 of 2008 by the learned Sub Judge – II, Patna whereby and whereunder



the substituted respondent No. 1 has been permitted to adopt another written statement of the original defendant No. 1.

4. Petitioner is the plaintiff who has filed the suit for partition bearing Title Partition Suit No. 467 of 2008 in regard to his 1/3rd share in the property detailed and described in Schedules 1, 2, 3 and 5 of the plaint and 1/2 share in the property detailed and described in Schedule 4 of the plaint. The parties to the suit are successor of the common ancestor, namely, Late Gorakh Nath Singh. Original defendant No. 1, Leela Devi @ Panwati Devi is mother and defendant No. 2 Swami Nath Singh and defendant No. 3 Premranjan Singh are brother of plaintiff/petitioner. Substituted defendant No. 1, Smt. Asha Singh is the sister of the plaintiff.

5. In the suit defendants jointly filed written statement contesting the claim and contentions of the plaintiff / petitioner. The sum and substance of their defence are that Schedule – II, property is self acquired property of original defendant No. 1 (Smt. Leela Devi), Schedule -III property is also property of defendant No. 1 (Leela Devi) and with respect to Schedule – V property there is no contest.

6. The original defendant No. 1, Smt. Leela Devi died and since all her legal representatives were already on the record



except the daughter Smt. Asha Singh who was substituted in her place and therefore she became defendant No. 1. Smt. Asha Singh appeared and filed written statement on 30.04.2014 wherein she admitted that Schedule 2 property is the joint family property and not of Smt. Leela Devi. It is also stated therein that she has got no temptation for her share in suit properties and plaintiff of this suit is discharging his duties as brother of this defendant.

7. On 16.05.2017 a petition was filed by respondent No. 1 Smt. Asha Singh stating that she wants to adopt the written statement filed by Smt. Leela Devi the original defendant No. 1 alongwith other defendants on the ground that the plaintiff is suffering from cancer and had to go Mumbai for her treatment and taking advantage of her illness the plaintiff took her signature over several sada papers and impressed her that her share in the property will be safeguarded and when she came to know the fraud committed by plaintiff in filing written statement, she filed the said petition for adopting earlier written statement filed by her mother.

8. The said petition was opposed by the petitioner but learned Court below allowed the petition of respondent No. 1 vide the impugned order dated 17.03.2018.



9 . Learned senior counsel for the petitioner submits that the learned court below without appreciating the facts and position of law allowed the respondent No. 1 to adopt the written statement which was earlier filed by original defendant No. 1 Smt. Leela Devi alongwith respondent Nos. 2 and 3 and also without any such prayer by defendant No.1 the trial Court passed order for recalling the order dated 30.06.2014 whereby the earlier written statement filed by the respondent No. 1 was accepted. It is further submitted that the only ground taken by respondent No. 1 for seeking an order of adoption of the earlier written statement filed by her deceased mother was that her signature was obtained by plaintiff-petitioner committing fraud on her. Further, it is submitted that in view of the fact that she has admitted that the earlier written statement filed on her behalf bears her signature then the Court below ought to have held an enquiry and unless the contention of respondent No. 1 would have been found to be correct, prayer was not liable to be entertained. It is further submitted that the said written statement was genuine is also evident from the fact that although there was participation on her behalf in the proceeding of the suit but cross examination of the witnesses of the plaintiff was declined on her behalf since stand of the plaintiff / petitioner and



respondent No. 1 both was common that properties in the suit are common joint family properties. Further he has submitted that there is delay of about 3 years in adopting written statement filed by her mother which is against the provision of Order 8 Rule 1 of the Code of Civil Procedure.

10. Having heard learned senior counsel for the petitioner and on perusal of the materials available on record including the impugned order, it appears that learned Court below observed that in written statement the original defendant No. 1, who was mother of the respondent No. 1, had contested the suit by filing her written statement so the substituted defendant cannot change the case of the original defendant No. 1. The substituted defendant may only bring any amendment in the written statement filed on behalf of the original defendant in case of occurrence of any subsequent event which takes place after the death of original defendant. No person has right to extinguish suo motu the claim or pleading of any deceased party in whose place any other person is substituted. The learned trial Court observed that the Court can rectify the previous order based upon improper facts and improper advice by the counsel of any party or on the basis of submission of learned counsel of any party to the Court.



11. Order XXII of the CPC provides for the procedure to be adopted on death, marriage and insolvency of parties. Order XXII Rule 4 deals with the procedure in case of death of one of the several defendants or of a sole defendant. In the present case, the relevant provision is Order XXII Rule 4 Sub-Rule (2), when defendant No. 1 died, the right to sue, survived against the heirs and accordingly defendant No. 1 (daughter of deceased original defendant No. 1) was substituted in place of original defendant No. 1. Sub-Clause (2) of Rule 4 Order XXII reads as under :-

“ (2) Any person so made a party make any defence appropriate to his character as legal representative of the deceased defendant.”

Thus, a party, who so impleaded would have a right to make any defence appropriate to his character as legal representative of the deceased defendant.

12. The deceased original defendant had already filed her written statement jointly with other defendants and therefore her legal representative (substituted defendant No.1) cannot be permitted to make out a fresh case in another written statement. The legal representative could not set the clock back and file a written statement, as if the case had started afresh.

13. The legal representatives can do is to take up the suit at the stage at which it was left when the original party died



and to continue it. The substituted legal representative is legally bound by the pleading of the predecessors-in-interest. Substituted legal representative has no independent right to make a defence and she is bound by the defence, if any, taken by the original defendant No.1.

14. The learned Court below by a reasoned order passed the impugned order allowing the petition of substituted defendant No. 1 permitting her to adopt the written statement dated 15.05.2009 filed on behalf of the original defendant No. 1. No reason or ground is made out for interference by this Court under the supervisory jurisdiction under Article 227 of the Constitution of India. The Miscellaneous application is devoid of merit and liable to be dismissed.

15. This Civil Miscellaneous application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	14.02.2023
Uploading Date	25.04.2023
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