

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.687 of 2020

In

FIRST APPEAL No.140 of 2016

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Anupma Kumari D/o Late Dr. Basudeo Sinha, Wife of Sri Sunil Kumar Singh
Resident of Village and P.O. Dahi Bhatta, Dakshin Tola, P.S. Uchka Gaon,
District-Gopalganj Presently residing at veer Shivaji Path, North S.K. Puri,
P.O. and P.S. Patliputra, District-Patna-13.

... .. Petitioner/s

Versus

1. Rajiv Ranjan Son of Dr. Basudeo Sinha (Now Dide) Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at H-102 Kukreja Estate Sector-11, Plot No. 36 CBD Belapur, New Mumbai-400614
2. Hemang Ranjan Minor Son of Rajiv Ranjan Under the Guardianship of His Father and Natural Guardian Rajiv ranjan Who has got No adverse interest against the minor. Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at H-102 Kukreja Estate Sector-11, Plot No. 36 CBD Belapur, New Mumbai-400614
3. Smt. Malti Sinha Wife of Late Basudeo Sinha Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at 6B/14, Tilak Magr, North Shri Krishapuri P.S. Patliputra, District-Patna. Patna-800013.
4. Dr. Rakesh Ranjan Son of Dr. Basudeo Sinha (now Died) minor Under the Guardianship of His father and Natural Guardian Dr. Rakesh Ranjan Who Has Got no. adverse interest against the Minor. Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at KDHC 68 Dakra Officer's Colony, P.S. Khelari, P.O. Dakra-829210, Ranchi, Jharkhand.
5. Surbhi Ranjan minor Daughter of Dr. Rakesh Ranjan. minor Under the Guardianship of His father and Natural Guardian Dr. Rakesh Ranjan Who Has Got no. adverse interest against the Minor. Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at KDHC 68 Dakra Officer's Colony, P.S. Khelari, P.O. Dakra-829210, Ranchi, Jharkhand.
6. Sidhant Ranjan minor Son of Dr. Rakesh Ranjan. minor Under the Guardianship of His father and Natural Guardian Dr. Rakesh Ranjan Who Has Got no. adverse interest against the Minor. Resident of Village-Ismaipur Dhibra, P.S. Phulwarisharif District Patna Presently residing at KDHC 68 Dakra Officer's Colony, P.S. Khelari, P.O. Dakra-829210, Ranchi, Jharkhand.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Srivastava
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY



ORAL ORDER

3 20-06-2023 Heard learned counsel for the petitioner-respondent no.6 who has preferred this MJC for recall of the order dated 4.12.2019 passed by a coordinate bench in First Appeal No. 140 of 2016 by which the said petition preferred by her brother Rajiv Ranjan was allowed permission to withdraw the said appeal and accordingly, the First Appeal No. 140 of 2016 was dismissed as withdrawn.

2. The said Rajiv Ranjan who is brother of the present respondent no.6-petitioner preferred Title Suit No. 1892 of 2014 before the learned Sub-Judge-II, Patna in which her father, mother as also another brother were the defendants. Subsequently, during the pendency of the said Title Suit, a compromise petition was preferred by the parties which again included the two brothers as also her parents and on the basis of which they wanted an order in the title suit.

3. However, the learned Sub-Judge-II, Patna vide its order dated 15.11.2016 did not find any reason to pass order on the basis of partition so made between the parties and as such the compromise petition dated 2.3.2015 filed by both the parties was rejected and the title suit was dismissed.

4. Aggrieved, the said Rajiv Ranjan preferred First Appeal No. 140 of 2016 before the Patna High Court.



Subsequently, the present respondent no.6-petitioner preferred I.A. No. 01 of 2019 with a prayer to include her as respondent no.6 in the memo of appeal and the same was allowed by a coordinate bench on 26.9.2019.

5. On 4.12.2019, the said Rajiv Ranjan chose to withdraw the First Appeal No. 140 of 2016 which was permitted to be withdrawn by the aforesaid order dated 4.12.2019 by the then Hon'ble the Chief Justice.

6. From the order-sheet dated 22.1.2020, it appears that the present respondent no.6-petitioner mentioned the matter which was declined after which the respondent wanted liberty to file an appropriate application and the then Hon'ble the Chief Justice recorded the following order:

"The matter stands listed on mention memo dated 10.01.2020.

By way of instant mention memo, respondent/defendant seeks permission to recall the order dated 4.12.2019 whereby the plaintiffs/appellants were permitted to withdraw the appeal.

This Court is of the considered



view that on a mention memo, the order cannot be recalled. Realising his mistake, learned counsel for the respondent prays for grant of liberty to file an appropriate application.

Well, it is right of any party to the list to file any application in the proceeding and no liberty in that regard is required".

7. Subsequently, the present MJC No. 687 of 2020.

8. Learned counsel for the petitioner submits that during the pendency of the First Appeal No. 140 of 2016, the said brother of her, Rajiv Ranjan preferred another Title Suit No. 153 of 2018 which was barred by the principle of *res judicate*.

9. He as such submits that she may be transposed as the petitioner to pursue the first appeal.

10. The First Appeal was preferred against the order of dismissal dated 5.11.2016 passed by learned Sub-Judge-II, Patna in Title Suit No. 1892 of 2014 against the brother of the petitioner in which no relief was granted to him.

11. Admittedly, against the said order, the First



Appeal was preferred which the said petitioner chose to withdraw.

12. The petitioner could have raised all the points in the second Title Suit No. 153 of 2019. So far as the present case is concerned, no relief can be granted and this Court do not deem it fit and proper to allow the present prayer.

13. The MJC 687 of 2020 stands dismissed.

(Rajiv Roy, J)

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