

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.11 of 2017

1. Vidyadhar Pandey and Ors S/o Late Meghu Pandey
2. Shree Ram Pandey @ Pappu Pandey son of Vidyadhar Pandey
3. Shambhu Saran Pandey
4. Rajiv Nayan Pandey Both sons of Shree Ram Pandey @ Pappu Pandey All residents of Village - Narao, P.S. - Bhabhua, District - Kaimur.

... .. Petitioner/s

Versus

1. Akhilesh Tiwari and Ors
2. Abhi Udai Tiwari
3. Arvind Tiwari
4. Ashok Tiwari All sons of Late Asharfi Tiwari All residents of Village - Narao, P.O. - Bararhi, P.S. - Bhabhua, Distt - Kaimur.
5. Prabha Devi wife of Ram Ashish Pandey Resident of Village Eshipur, P.O. - Durgawati, District - Kaimur.
6. Padma Devi wife of Shri Awadhesh Tiwari Resident of Village - Parewa, P.O. - Naubatpur, P.S. Saiyadraja, Distt - Chandauli, U.P.
7. Suman Devi wife of Awadhesh Tiwari Resident of Village - Rampur, Barhani, P.S. - Saiyadraja, Distt - Chandauli, U.P.
8. Kanti Kuer Widow of Late Umdapati Tiwari Resident of Ward No. 2, Bhabhua, Distt - Kaimur.
9. Babbu Tiwary
10. Dabbu Tiwary Both sons of Late Laxmi Narain Tiwari
11. Shyam Narayan Tiwari son of Late Aditya Nr. Tiwari All sons of 9 to 11 are residents of Village - Madurana, P.S. - Chainpur, Distt - Kaimur. At presently residing Mohalla - Kalika Gali, P.S. Dasashmegh, Varanasi, Distt - Varanasi U.P.
12. Urmila Kuer Widow of Late Chandra Bhushan Pandey
13. Ram Shankar Pandey son of Late Chandra Bhushan Pandey Both residents of Village - Narao, P.O. - Bararhi, P.S. Bhabhua, Distt - Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhouri Vipin Bihari Shrivastava
For the Respondent/s : Mr.Patla Kumari

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 12-09-2023

Re. I.A. No. 01 of 2023.



This Interlocutory Application has been filed for expunging the name of petitioner no. 1 namely *Vidyadhar Pandey* who died on 08.01.2022 and also respondent no. 2 namely *Abhiudai Tiwari* who died on 13.05.2021.

For the reasons mentioned in the interlocutory application, it is allowed and let the name of the petitioner no. 1 namely Vidyadhar Pandey and respondent no. 2 namely Abhi Udai Tiwari be expunged from the list and name of the legal heirs and legal representatives of respondent no. 2 namely Abhi Udai Tiwari as mentioned in this application be substituted in place of deceased respondent no. 2.

The legal heirs of petitioner no.1 are already on record therefore the name of the petitioner no.1 may only be deleted and his legal heirs mentioned in paragraph 3 of the interlocutory application may be substituted in his place.

Learned counsel for the petitioner is permitted to make necessary correction in paragraph 3 of the interlocutory Application.

The amendment petition has been rejected by the impugned order and the suit has been held to be abated without considering the amendment petition. The only grievance of the learned counsel for the petitioner is that the amendment petition



should have been considered and in view of the law laid down by the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr. AIR 2022 SC 4256*** the amendment application should have been allowed. He further submits that if the amendment application is allowed, the suit may not abate and in these circumstances he submits that the Court below be directed to consider his amendment application and thereafter decide as to whether the suit has abated under the Consolidation Act or not.

Learned counsel for the petitioner has no objection if this procedure is adopted as without considering the amendment application the impugned order has been passed.

In view of the above, this application is allowed.

The matter is remitted back with a direction to the Court below to consider the amendment petition first and after hearing the petitioner or amendment the Court below will pass an order in accordance with law and particularly and in view of the ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr. (Supra)***, Thereafter, the Court below will consider the question as to whether the suit has abated or not.

The amendment petition shall be considered within



a month of receipt of a copy of this order.

(Sandeep Kumar, J)

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