

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.471 of 2016**

1. Shambhu Mistri
2. Shyam Kumar
3. Ram Kumar
4. Mahabir Kumar
5. Onkar Kumar
6. Mohni Kumari @ Dulari Kumari All Sons and daughter of Late Ram Chandra Prasad residents of Mohalla - Brahmnightat, P.S. Civil Lines, District - Gaya

... .. Petitioner/s

Versus

1. Gopal Yadav, Son of Bihari Yadav, resident of Mohalla - Maranpur, P.S. Civil Lines, District - Gaya
2. Vijay Prasad, Son of Late Veni Pandit, resident of Mohalla - Maranpur Hanuman Nagar, P.S. Civil Lines, District - Gaya
3. Anita Kumari Singh daughter of Late Ajay Kumar Singh, resident of Mohalla - Sahmir Takiya, P.S. Civil Lines, District - Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jitendra Kishore Verma, Advocate
For the Respondent/s :

**CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT**

Date : 16-05-2023

The petitioners in the above case challenged Annexure-5 order as affirmed by Annexure-6 respectively by the Sub-Judge-I Gaya and the Additional District Judge-I, Gaya.

The brief facts necessary for disposal of the case are that the predecessor in interest of the petitioners one Siya Devi filed TS No. 251 of 2003 before the Sub-Judge-I, Gaya. The suit was one filed for declaration of title and for setting aside two deeds executed by the 1st defendant in favour of the 2nd and 3rd



defendants. According to them, Schedule-I properties were purchased by her and she had absolute and exclusive title. The petitioners herein filed a petition dated 22.08.2007 bringing to the notice of the Court that the plaintiff had died and seeking one week's time for filing a substitution petition; which was granted by the Lower Court. However, no petition was filed within a reasonable time after that, to substitute the legal heirs in the place of the plaintiff and none within 90 days. The statutory period ended on 22.11.2007 and still later on 06.02.2008, the Sub-Court dismissed the suit as abated. It was much later on 19.05.2018 an application was filed for restoring the suit and there was a contention raised that the petitioners are illiterate and were ignorant of the provisions of law. But, still no such application for setting aside the abatement or substitution of the plaintiff was filed by the petitioners which were filed subsequently on 22.10.2008. This application stood rejected by the Sub-Court which order was affirmed by the Appellate Court, which are challenged as Annexure-5 and Annexure-6.

The learned counsel for the appellant vehemently argued that the petitioners were illiterate and were not aware of the provisions of law. It is also contented that the trial Court had rejected the application on the ground that the suit had abated;



which could have been resurrected now by allowing the petition for condoning the delay, setting aside the abatement and permitting substitution of the plaintiff with the legal heirs. It is urged that serious prejudice would be caused if the prayer is not allowed.

By Annexure-5 the Sub-Court rejected the application on the finding that the suit had abated as a whole and hence the applications filed by the petitioners have no foundation to stand on.

This Court is of the opinion that the said finding may not be fully correct since it is for the Court to consider whether the applications filed could be allowed or not. Especially, the delay condonation application and the prayer for setting aside abatement, which if stands allowed the necessary consequence will be a substitution of the legal heirs. However, it is to be noticed that the Sub-Court had in its order narrated the manner in which the death was reported and the application for substitution was delayed.

This Court finds the Appellate Court to have considered the matter in the proper perspective. In appeal the Additional District Judge found that neither in the first application filed, where the plaintiff was reported to be dead nor



in the present application which stood rejected; the date of death was mentioned. It was also found that there was absolutely no reason stated for condoning the delay, especially when an application was filed seeking substitution on 22.08.2007, which attempt for substitution was made only much later on 22.10.2018.

This Court has looked at the application filed for substitution which is at Annexure-2 series. The date of death of the plaintiff is shown as 25.07.2007. However, nothing is seen produced before the Lower Court to establish the death of the plaintiff. Even before this Court, no death certificate is produced. It is also pertinent that the applicant does not give any reason for the delay occasioned. The affidavit indicates that after death of the plaintiff the legal heirs could not inform the counsel regarding the death of the plaintiff and hence no petition for substitution could be filed within 90 days. In fact, the death was reported to the Court on 22.08.2007 by a petition filed and time was also sought for making a substitution which was not done within 90 days or within a reasonable period therefrom.

Again, the affidavit indicates that on 14.05.2008 the applicant approached the lawyer and was made aware of the requirement for a substitution petition to be filed. However,



again the matter was delayed and the substitution was filed only on 22.10.2008. The facts of the case do not call for an interference with the order passed by the lower court as affirmed by the Appellate Court. This Court is unable to countenance the contention taken by the petitioners that it was due to the petitioners ignorance that no application for substitution was filed. The death was reported within the 90 days period and time was also sought for filing an application for substitution, which was not filed within the period provided or later within a reasonable time. There was also no reason stated for the delay occasioned in the affidavit filed in support of the delay condonation petition.

The Civil Miscellaneous Case hence would stand dismissed.

(K. Vinod Chandran, CJ)

Anushka

AFR/NAFR	
CAV DATE	
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