

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.919 of 2018**

Shyam Sunder Prasad, S/O Late Ramdhari Prasad, resident of village –
Mohalla – Jhauganj, P.S. Chowk, District - Patna

... .. Petitioner

Versus

1. Bhola Prasad
1a. Nand Kishore Prasad
1b. Anand Mohan Gupta
1c. Subhash Chandra Gupta
1d. Ved Prakash
All sons of Late Ram Narain Sah.
1e. Asha Devi, w/o Sri Brij Mohan Prasad, D/o Late Ram Narain Sah
1f. Shobha Devi, w/o Ashok Kumar, D/o Late Ram Narain Sah
1g. Sheela Devi, w/o Sri Manoj Saxena and D/o Ram Narain Sah
All Resident of Mohalla – Pua Gali, Jhauganj, P.S. Chowk, District – Patna
Patna – 8
9. Kishori Devi, w/o Late Ramchandra Prasad Halwayee
10. Suraj Prasad, S/o Late Ramchandra Prasad Halwayee
Both Resident of Hazi Ganj, P.S. Chowk, District - Patna

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manager Sah, Advocate
For the Respondent/s : Mr. Ravindra Kr Sinha No.2, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

13 24-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for setting aside the order dated 29.01.2018 passed by the Munsif, Patna City in Title Eviction Suit No. 9 of 1999 (Bhola Prasad and others Versus Smt. Kishori Devi & Others) by which the petition dated 24.05.2017 filed by petitioner / defendant No. 3 under Order V Rule 3 of CPC has been rejected by the impugned order dated 29.01.2018.

3. Learned counsel for the petitioner submits that



Kishori Devi defendant- respondent No. 1 had died in the year 2002 and the said fact was brought to the notice of the Court but petitioner has not taken appropriate steps in this regard and denied the death of respondent No.1. Accordingly, he has filed the application before the Court under Order V Rule 3 CPC that the Court may order defendant to appear in person to ascertain the fact whether the respondent No. 1 is alive or dead. Learned counsel for the plaintiff / respondent submits that he has got no information with respect to death of defendant No. 1.

4. The learned Court below in the impugned order has observed that there is no reason for making personal appearance of the defendant No.1. when there is allegation that defendant No. 1 has already died, then there is no question for making personal appearance of defendant No. 1.

5. In view of the controversy between the parties with respect to death of respondent No. 1, it is in the interest of justice that the learned Court below may conduct inquiry in accordance with law and proceed accordingly. Learned counsel for the parties submits that this case may be disposed of with aforesaid direction.

6. In view of the submission on behalf of the parties, learned Court below shall make an inquiry about the death of



respondent No. 1 and proceed in the case in accordance with law.

7. With this aforesaid observations, this Civil Miscellaneous Application is disposed of.

(Sunil Dutta Mishra, J)

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