

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.587 of 2018

- 1.1. Usha Devi W/o Rameshwar Pandey, R/o Village Semra, P.S.-Semra (Bikramganj), District-Rohtas.
- 1.2. Rajan Kumar Chaubey, S/o Late Shambhunath Chaubey, R/o Village-Parmanpur, P.S.-Nawanagar, District-Buxar.
- 1.3. Ranjan Kumar Chaubey, S/o Late Shambhunath Chaubey, R/o Village-Parmanpur, P.S.-Nawanagar, District-Buxar.

... .. Petitioner/s

Versus

1. Onkarnath Chaubey S/o Chandradeep Chaubey Resident of Village-Parmanpur, P.S.-Nawanagar, District-Buxar.
2. Vashistha Muni Chaubey S/o Shukh Nandan Chaubey Both Resident of Village-Parmanpur, P.S.-Nawanagar, District-Buxar.
3. Shanjeev Chaubey,
4. Prabhal Chaubey,
5. Yogesh Chaubey,
6. Raju Chaubey
All Sons of Late Amardan Chaubey.
7. Moortiyam Raghunath Jee, Shaligram Jee, Vo, Hanuman Jee, Bajaria Pujari, Raju Das Chela, Jamunadas All Resident of Village-Parmanpur P.S.-Nawanagar, District-Buxar.
8. Mukhiya, Gram Panchayat Parmanpur, P.S. Nawanagar, District-Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravi Kumar, Advocate
For the Respondent/s : Mr. Anand Kumar Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 03-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 30.10.2017 passed in T.S. No. 206 of 2002 by the learned Sub-Judge-Ist, Dumaraon (Buxar) whereby and whereunder a



petition by respondent/plaintiff under Order 22 Rule 4 and Section 151 of C.P.C. for substitution of Late Jamuna Das has been allowed.

3. The brief facts of the case are that the petitioner had filed a Title Suit No. 125 of 1991 for declaration of the disputed temple and its properties to be her private trust which was decreed in favour of the petitioner judgment and decree dated 20.03.2002. The respondent-plaintiff filed a Title Suit No. 206 of 2002 for declaration that judgment and decree passed in Title Suit No. 125 of 1991 will not be binding on plaintiff and general public with regard to pooja path and entrance in the disputed temple and the contesting defendant including the petitioner should not interfere in it. Respondent/plaintiff earlier filed a petition dated 28.05.2015 under Order 22 Rule 4 and Section 151 of CPC for expunging the name of Jamuna Das who had died on 09.03.2003 who was a party-defendant in the suit which was allowed vide order dated 29.09.2015. The respondent/plaintiff again filed a petition under Order 22 Rule 4 and 151 CPC for substitution of legal heir of the said Late Jamuna Das who died on 09.03.2002 which was objected by the petitioner on the ground firstly that the person sought to be substituted is not chela of Janardan Das and he has got no right



to be substituted in place of Late Jamuna Das as his legal representative and secondly that when the name of Jamuna Das has already been expunged then after 14 years his alleged legal heir cannot be substituted in his place. The learned trial Court allowed the said substitution petition.

4. Learned counsel for the petitioner submits that when the name of Jamuna Das has already been expunged by the learned Court below then question of substitution of his alleged legal heir does not arise. The substitution petition was contested by the petitioner on the question of heir/ legal representative, accordingly, the learned trial Court has to comply with the provision of Rule 5 of Order 22. The trial Court's order is not consonance with the provisions of Order 22 Rule 5 CPC and is unjust, perverse, not in the interest of justice and contrary to the settled principles of law.

5. On the other hand, learned counsel for the respondent supports the order passed by the trial Court and submits that at the time of death of Jamuna Das his chela was not known accordingly his name was deleted on the petition filed by the plaintiff, however, when it came into the knowledge about his chela, the petition for his substitution has been filed and on the facts and circumstances of the case, the learned Court



below has passed the reasoned order.

6. The issue arise for consideration is, what is the procedure to be adopted by the Court when such application is filed before the Court and contested.

7. Legal representative according to its definition in Section 2(11) CPC, means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. Order 22 CPC, *inter alia*, deals with death of parties. Rule 4 relates to the procedure in case of death of one of several defendants or the sole defendant. Rule 5 relates to determination of question as to the legal representatives. Rules 4 and 5 to the extent relevant, are extracted as under:

“4. Procedure in case of death of one of several defendants or of sole defendant:- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

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

5. Determination of question as to legal representative:- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a



deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellant Court may take the same into consideration in determining the question.”

8. When a Legal Representative (LR) application is filed, the Court should consider it and decide whether the person named therein as the legal representatives, should be brought on record to the estate of the deceased. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. The determination as to who is the legal representative under Order 22 Rule 5 will be for the limited purpose of representation of the deceased, for adjudication of that case. The Hon'ble Supreme Court in the case **Jaladi Suguna (Deceased) through LRS. vs. Satya Sai Central Trust and Others** reported in **(2008) 8 SCC 521** observed that provisions of Rules 4 and 5 of Order 22 CPC are mandatory. The CPC clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the Court.



9. Having heard the learned counsel for the parties and considering the material on record, it is undisputed that Jamuna Das, party-defendant in suit died on 09.03.2002 whose name was expunged on the application of plaintiff and the plaintiff again filed a petition under Order 22 Rule 4 read with Section 151 CPC for substitution of his chela Raju Das in place of Late Jamuna Das which has been contested by the petitioner which requires determination under Rule 5 of Order 22 CPC which has not been done by the learned trial Court.

10. In the light of aforesaid discussion, the impugned order dated 30.10.2017 passed in T.S. No. 206 of 2002 is set aside. This Civil Miscellaneous Application is, accordingly, allowed.

11. The learned Court below is directed to decide the said application dated 31.01.2017 filed by plaintiff under Order 22 Rule 4 and 151 CPC afresh in accordance with law as stated above expeditiously.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07.07.2023
Transmission Date	

