

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.808 of 2016**

1. Jag Mohan Singh,
2. Rameshwar Singh,
Both Sons of Ram Ashish Singh, Both residents of Village - Jagdishpur, P.S.
Buxar Muffasil, P.O. Nadawn, District - Buxar.
3. Dulhin Urmila Devi @ Urmila Devi, W/o Babban Koeri
4. Babban Koeri S/o Late Kariman Koeri Both residents of Village and P.O.
Nadawn, P.S. Buxar Muffasil, District - Buxar.

... .. Petitioner/s

Versus

1. Ram Dayal Kushwaha @ Ram Dayal Singh Kushwaha, S/o Late Kariman
Koeri R/o Village and P.O. Nadawn, P.S. - Buxar Muffasil, District - Buxar.
2. Ram Das Koeri S/o Late Kariman Koeri
3. Shakuntala Kumari
4. Mamta Kumari Both 3 & 4 D/o Lallan Koeri
5. Ram Kripal Koeri
6. Manoj Kumar Singh Both 5 & 6 Sons of Ram Dayal Singh
7. Ram Nath Koeri
8. Lal Bahadur Koeri Both 7 & 8 Sons of Late Kailash Koeri
9. Ramji Koeri, son of Late Kailash Koeri
10. Sita Devi
11. Sumitra Devi
12. Durga Devi 10 to 12 D/o Nagina Koeri
13. Chhotho Singh S/o Late Motijharo Devi & Paras Nath Singh All 12 to 13
residents of Village and P.O. Nadawn, P.S. - Buxar Muffasil, District -
Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ratan Kumar Sinha, Advocate Mr. Manojeshwar Pd. Sinha, Advocate Mr. Madhukar Pandey, Advocate
For the Respondent no.1 :		Mr. Manoj Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 06-05-2024

Heard learned counsel for the petitioners and learned
counsel for the respondent no.1.



2. The present petition has been filed under Article 227 of the Constitution of India against the order dated 10.05.2016 passed by the learned Additional District Judge-III, Buxar, in Title Appeal No. 76 of 2006 whereby and whereunder the application filed on behalf of the appellant under Order 22 Rule 4 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for substitution of legal heirs of deceased respondent no.8 has been rejected and the appeal has been disposed of as abated.

3. The learned counsel for the petitioners submits that the learned first appellate court erred on the point that it held that the appeal is abated against all the respondents when it came to a finding that the application under Order 22 Rule 4 of the Code was filed by the appellant after much delay. The learned first appellate court could not have disposed of the appeal holding it to have been abated as other respondents were also there and right to sue survived. However, learned counsel submits that the matter has been compromised between the parties and I.A. Nos. 1/2024 and 2/2024 have been filed detailing all these facts seeking early disposal of the present petition.

4. The learned counsel appearing on behalf of the



respondent no.1 admits the contention of the learned counsel for the petitioners regarding a compromise being effected between the parties. Though the instant civil miscellaneous petition has been filed against the order whereby the learned first appellate court disposed of the title appeal as being abated and, in such circumstances, a civil revision under Section 115 of the Code is maintainable.

5. However, considering the fact that the present petition is pending since 2016 and there appears apparent error of jurisdiction on the face of record in the order of the learned first appellate court which has been challenged before this Court, the impugned order dated 10.05.2016 is set aside and the instant petition is allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2024
Transmission Date	NA

