

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.507 of 2023

In
CIVIL MISCELLANEOUS JURISDICTION No.351 of 2023

Dr. Sundar Das Shastri Son of Late Mahabir Das Kabir Ashram, Bahoriya, P.O. Malipur, P.S. and District Deoria (U.P.), at present resident of Mohalla Kabir Math, Turki, District Muzaffarpur.

... .. Appellant/s

Versus

1. The Bihar State Board of Religious Trust, Patna through its President, Vidyapati Marg, P.S. Kotwali, District- Patna.
2. Administrator cum Special Officer (At present President), Bihar State Board of Religious Trust, Patna through its President, Vidyapati Marg, P.S. Kotwali, District-Patna.
3. Sub Divisional Officer, Muzaffarpur (West), Distt.- Muzaffarpur.
4. The Collector, Muzaffarpur.
5. Raghubansh Bhagat @ Raghubansh Singh Yadav, Chela of Late Mahanth Shyam Nandan Bhagat, Kabir Math Turki, Village and P.O. Turki, P.S. Kurhani, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Advocate.
	:	Mr. Madan Mohan, Advocate.
For the Respondent/s	:	Mr. Raj Kishore Roy, GP-18.
For the BSBRT	:	Mr. Shekhar Singh, Advocate.
For the Res. No.5	:	Mr. Shyam Sundar Pandey, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 07-10-2024

1. Heard Mr. Ganpati Trivedi, learned Senior Counsel assisted by Mr. Madan Mohan, learned counsel for the appellant, Mr. Shekhar Singh, learned counsel for the Bihar State Board of Religious Trust, Patna (hereinafter referred to as “The Board”) and Mr. Shyam Sundar Pandey, learned counsel for the respondent no.5.

2. This appeal has been filed under Section 55 of



the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as 'The Trusts Act') by the appellant, Dr. Sundar Das Shastri who is trustee in the Kabir Panthi Math, Turki situated in District Muzaffarpur against the order dated 05.11.2022 passed by learned District Judge, Muzaffarpur in Misc. Case No.119 of 2017 whereby respondent no.5, Raghubansh Bhagat @ Raghubansh Singh Yadav has been substituted in place of sole petitioner Shyam Nandan Bhagat (since deceased).

3. The facts in brief are that Kabir Panthi Math, Turki, Muzaffarpur is a religious trust registered with Bihar State Board of Religious Trust, Patna (respondent no.1). After the death of Mahant Girija Nandan Bhagat, his chela Shyam Nandan Bhagat was appointed as Mahant of the said Math in the year 2002. Several complaints were received against Mahant Shyam Nandan Bhagat including misappropriation of the properties of the Math, show cause notice was issued against him and after hearing him, his explanation was not being found satisfactory, therefore, he was removed from the Mahantship by order contained in letter dated 19.10.2011 under the provisions of Section 28 (2) (h) (iii) & (vi) of The Trusts Act and Sub-Divisional Officer, Muzaffarpur West was appointed to work as temporary trustee under Section 33 of the Trusts Act. On the



request of the President of Board to Mahant of Acharya Kabir Chaura Math, Varanasi for recommending the name of a suitable person for being nominated as Mahant of the Math, the name of appellant has been recommended, consequently the appellant was appointed as trustee till further order on the basis of order of the Board dated 05.09.2012 and he was appointed as permanent trustee of the Math under Memo No.1253 dated 03.10.2013.

4. The said Mahant, namely, Shyam Nandan Bhagat had assailed the order dated 19.10.2011 passed by the President of the Board in C.W.J.C. No.22682 of 2011 which was disposed of vide order dated 23.08.2017 with liberty to approach before the District Judge, Muzaffarpur for redressal of his grievances. Thereafter Misc. Case No.119 of 2017 was filed by the said Mahant Shyam Nandan Bhagat in the Court of learned District Judge, Muzaffarpur under Section 28 (3) of The Trusts Act to set-aside the orders of Board for removal of Shyam Nandan Bhagat from trustship (Mahantship) and appointment of appellant as trustee and President of the Trust Committee of Math. During the pendency of said case, Shyam Nandan Bhagat died on 03.06.2022, thereafter respondent no.5 filed an application on 27.06.2022 for substituting himself in his



place, claiming himself to be the *Chela* of Shyam Nandan Bhagat. The said substitution application was opposed by the Board and the appellant stating therein that Mahantship was not heritable and after the removal of Mahant Shyam Nandan Bhagat, the appellant had been appointed as trustee in the said Math by the Board and hence the question of substituting respondent no.5 in place of Shyam Nandan Bhagat did not arise at all and the proceeding of Misc. Case No.119 of 2017 stood abated due to death of said Shyam Nandan Bhagat.

5. After hearing the parties, the learned District Judge, Muzaffarpur vide impugned order dated 05.11.2022 allowed the prayer of the substitution of respondent no.5 in place of Late Shyam Nandan Bhagat.

6. Aggrieved by the said order, the appellant filed the present Misc. Appeal.

7. Learned senior counsel for the appellant has submitted that after the death of Shyam Nandan Bhagat, nothing remains to be adjudicated in the miscellaneous case. The only question before the learned District Judge, Muzaffarpur was as to whether the orders of removal of Shyam Nandan Bhagat and appointment of appellant as trustee are legal or not? He further submitted that the original petitioner Shyam Nandan Bhagat or



respondent no.5 have not taken previous sanction from the Board for filing application before learned District Judge for removal of present trustee or appointing him as new trustee. Accordingly, the Misc. Application is not maintainable. The grievance of Late Shyam Nandan Bhagat against his removal as Mahant was his personal right which does not survive and the whole miscellaneous case abates and the same cannot be inherited by any person. He has further submitted that during his lifetime Shyam Nandan Bhagat had never communicated to The Board or the Court about the appointment of his successor and the substitution petition filed by the respondent no.5 was wholly misconceived. It was vehemently urged that in a case for personal right which is the main relief that does not survive on death of petitioner, the permitting substitution of alleged chela as legal representative of petitioner, Late Shyam Nandan Bhagat and not abating the proceeding; the impugned order is illegal and is liable to be set-aside.

8. Learned counsel for the Board has supported the arguments advanced on behalf of appellant and has submitted that after death of Shyam Nandan Bhagat, who had challenged the order of his removal from the trustee/Mahant of Kabir Panthi Math, Turki, Muzaffarpur by the Board, the Misc. Case



became infructuous and the question of substituting legal heirs of petitioner is not proper and liable to be set-aside. He has also submitted that there is no provision under Section 28 of the Trusts Act for substitution of legal heirs of petitioner in miscellaneous case before the learned District Judge.

9. On the other hand, learned counsel for the respondent no.5 has submitted that the impugned order is quite legal, justified and within the four corners of law and facts of the case. The respondent no.5 is Chela-cum-nephew of Late Mahant Shyam Nandan Bhagat who is entitled to be substituted in place of petitioner in the miscellaneous case and appellant has been appointed as Mahant for limited period and his appointment in place of Late Shyam Nandan Bhagat is not in accordance with the law.

10. Learned counsel for respondent no.5 has further submitted that Section 57 of the Trusts Act provides that every order of the Board passed under Clause (h) of sub-section (2) of Section 28 shall be enforceable by any civil Court having local jurisdiction in the same manner as a decree of such Court. He also pointed out that under Section 56 for the purposes of inquiries under the Act, the Board has same power to summon and enforce the attendance of witnesses and parties and to



compel production of documents as civil Court under Civil Procedure Code (in short “CPC”). He has submitted that provisions of CPC with respect to substitution of legal heirs of applicant shall be applicable.

11. After considering the facts and circumstances of the case, the learned District Judge has passed the impugned order which requires no interference by this Court. The appeal has no merit and liable to be dismissed.

12. The question whether the Board has power to appoint and remove the trustee or whether the Board had illegally removed Mahant Shyam Nandan Bhagat and appointed appellant as trustee is to be decided by the learned District Judge, Muzaffarpur in Miscellaneous Case and merit of the said case is not required to be appreciated in this proceeding.

13. The only question in this appeal is whether the substitution of legal heir of petitioner after his death in Misc. Case No.119 of 2017 is tenable?

14. Order XXII C.P.C. deals with creation, assignment and devolution of interest during the pendency of suits and appeals. Order XXII C.P.C. seeks to take away the right of plaintiff or appellant from proceeding with the suit or appeal on the ground that the suit instituted or appeal preferred



by him has abated. Abatement kills the right to sue and has the effect of unceremoniously terminating pending legal proceedings without adjudication on merit. It is, therefore, applied only in those cases to which its applicability is undoubtedly attracted.

15. The object of substitution is limited to the extent by allowing the plaintiff or appellant to continue the litigation so that adjudication of rival claims can be done by a Court in accordance with law.

16. Where a party to a suit dies, the first question which requires consideration is whether the right to sue survives?

17. Rule 1 of Order XXII CPC clearly provides that the death of a plaintiff or defendant; shall not cause the suit to abate if the right to sue survives. Rule 5 provides that 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.

18. The Full Bench of this Court in the case of **Yogendra Bhagat Vs. Pritlal Yadav** reported in **2009 (3) PLJR 697** held that the definition of word 'legal representative', as provided under Section 2 (11) of the CPC is inclusive in



character and its scope is wide. It is not confined to a preferred class of heirs only but also includes even intermeddlers. As per Rule 5 of Order XXII of CPC where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or deceased defendant, such question shall be determined by the Court. This Court in case of **Usha Devi vs. Onkarnath Chaubey** reported in **(2023) 5 BLJ 552** in para 8 held as under:-

*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 of **Jaladi Sugunna (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.*

19. The expression “Right to Sue” has not been defined in CPC but it may be construed to mean “right to seek relief” or “right to bring a suit claiming relief”. The survival of the right to sue on the death of plaintiff is an issue that can be resolved on a combination of several facts and circumstances. As a general rule all rights of action and all demands whatsoever existing in favour of or against a person at the time



of his death survive to or against his representatives. But in case of personal actions i.e. actions where the relief sought is personal to the deceased or the rights intimately connected with the individuality of the deceased, the right to sue will not survive to or against his representatives. The personal action dies with the persons applies certain acts and omission that are purely personal in nature will not survive.

20. In this case, the petitioner had challenged his removal and appointment of appellant as trustee of the Math. Due to his death, the petitioner cannot be reinstated as trustee because the same is not possible due to his death. There is no issue in this case that legal representative of petitioner is entitled to be appointed as Trustee of the Math. The Court has to pass the appropriate order on merit of the case considering the material on record in accordance with law.

21. The principle is well settled that so long as the **personal right** of a person or the personal damages claimed by a person is confined to the person who makes such a claim, no such relief can be granted after his death. However, in the matter where a declaration is sought that he had been illegally terminated, that declaration may be decided after date of his death and, the legal representative is entitled to the finding that



the removal of the petitioner was wrongful and further they are entitled to the relief in consequence thereof and the Court is competent to decide this on the substitution of the legal representative.

22. The contention on behalf of respondent/Board that there is no provision under Section 28 of the Trusts Act to substitute any person in place of the petitioner, the learned District Judge, Muzaffarpur rightly observed that section 57 of the Trusts Act reflects that order of Board based on Clause (h) of Section 28 is enforceable as a decree of such Court and since the *lis* is pending and the main petitioner died and a person has come for his substitution (as legal heir) to defend the interest of the deceased petitioner, then in the interest of justice, the substitution petition was allowed.

23. In view of the above discussion, in my view, there is no valid ground to interfere in the impugned order passed by the learned District Judge, Muzaffarpur. He has fairly allowed the petition of respondent no.5 by substituting him in place of deceased petitioner. This Misc. Appeal is, accordingly, **dismissed** with no order as to cost.

24. Needless to say that this Court has not given any finding on the facts/merits of the case. The reasons given



herein are only for the purpose of deciding the present appeal.
All contentions/issues on the merits of this miscellaneous case and the question with respect to whether the respondent no.5 is chela of Late Shyam Nandan Bhagat or not, if raised and so required in the opinion of Court concerned, are left open to be decided by the concerned Court in accordance with law.

25. All the interim orders stand vacated.

26. Interlocutory Application, if any, shall stand disposed of.

27. The learned Court concerned shall take steps for early disposal of the aforesaid miscellaneous case and both the parties shall co-operate in this regard.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	18.07.2024
Uploading Date	07.10.2024
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