

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.40 of 2022

1. Bhan Prakash Pathak Son of Late Janardan Pathak Resident of Village-Harala P.S. Sonhan District-Kaimur Bhabhua.
2. Om Prakash Pathak Son of Baldau Pathak Resident of Village-Harala P.S. Sonhan District-Kaimur Bhabhua.
3. Sri Prakash Pathak Son of Baldau Pathak Resident of Village-Harala P.S. Sonhan District-Kaimur Bhabhua.
4. Bed Prakash Pathak Son of Sri Umesh Pathak Resident of Village-Harala P.S. Sonhan District-Kaimur Bhabhua.

... .. Petitioner/s

Versus

- 1.1. Ram Chandra Yadav S/o Lal Muni Singh Yadav Resident of Old Ward no.- 6 and New 16, Bhabhua, P.S.- Bhabhua, District- Kaimur (Bhabhua).
2. Bijay Kant Agrawal Son of Late Lakhi Prasad Agrawal Resident of Bhabhua Ward no.New 10 Old 3 P.S. Bhabhua District-Kaimur (Bhabhua)
3. Gyan Praksh Pathak Minor Son of Umesh Pathak Under the Guardian Ship of Umesh Pathak Resident of Harala P.S. Sonhan District-Kaimur(Bhabhua).
4. Chandra Prakash Pathak Minor Son of Umesh Pathak Under the Gaurdian Ship of Umesh Pathak Resident of Harala P.S. Sonhan District-Kaimur(Bhabhua).
5. Shashi Prakash Pathak Minor Son of Umesh Pathak Under the Guardian Ship of Umesh Pathak Resident of Harala P.S. Sonhan District-Kaimur(Bhabhua).
6. Sankat Mochan Pathak Minor Son fo Dinesh Pathak Under the Guardian Ship of his Father Namely Dinesh Pathak Resident of Harala P.S. Sonhan District-Kaimur(Bhabhua).

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arabind Nath Pandey, Adv.
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 02-07-2024

Re: I.A. No. 01 of 2023

This interlocutory application has been filed for substituting the name of the heirs and legal representatives of opposite party no. 1, namely, Lalmuni Singh Yadav, who died on 01.01.2023 leaving behind his heirs and legal



representatives whose details are mentioned in paragraph no. 2 of the interlocutory application.

2. Considering the aforesaid facts and circumstances of the case and averments made in the interlocutory application, I.A. No. 01 of 2023 is allowed.

3. Office is directed to delete the name of opposite party no. 1 and substitute his heirs mentioned in paragraph no. 2 of the interlocutory application.

4. This Civil Revision application has been filed against the judgment and order dated 17.06.2022 passed by the learned Munsif, Kaimur, Bhabhua in Misc. Case No. 01 of 2010 whereby Misc. Case filed under Order 9 Rule 13 of Civil Procedure Code has been allowed and the ex-parte judgment and decree dated 22.10.2009 passed in Title Suit No. 149 of 2009 is set aside.

5. Upon considering the submissions and perusal of the impugned order, it is manifest that Title Suit No. 149 of 2009 was filed on 09.09.2009 and the same was admitted on 17.09.2009. On 17.09.2009 the learned court had directed to take steps for issuance of notice for appearance of defendants through registered post as well as publication



of notice in local newspaper within three days and on the very same day the court also directed the plaintiff to file requisites for issuance of show cause notice on the petition filed under Order 39 Rule 1 and 2 of the Civil Procedure Code to defendants through special messenger. The learned court has observed that the notices were served on 18.09.2009 on defendant Lalmuni Singh Yadav's nephew, namely, Nirmal Yadav but in this regard no any affidavit was filed by the plaintiff in the court as to whether the person who had received the notice on behalf of the defendants was residing in the same house or not. It is also observed that there is no affidavit of the process server in respect of summons under Order 5 Rule 17 CPC. It is also noted that on perusal of evidence adduced by the defendant it has been proved that there has been non service of summons on them in the suit.

6. After considering the submissions, perusal of impugned order, legal position and several decisions of this Court as well as of the Hon'ble Supreme Court, this court is of the view that the learned court below rightly allowed the Misc. Case and restored the suit to its original file and



number. There is no reason to interfere with the impugned order passed by the learned trial court.

7. This Court, therefore, does not find that the learned court below has committed jurisdictional error or illegality in passing the impugned order.

8. Accordingly, the Civil Revision application is dismissed.

(Khatim Reza, J)

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