

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1184 of 2019

1. Geeta Devi, W/o Late Ramesh Singh,
2. Amit Kumar Singh S/o Late Ramesh Singh
3. Amrendra Singh S/o Late Ramesh Singh
All are residents of village- Banchahari, P.O.- Parsa, P.S.- Bagaha, District-
West Champaran

... .. Petitioner/s

Versus

1. Manoj Singh, S/o Late Dharmdeo Singh,
2. Pramod Singh S/o Late Dharmdeo Singh
Both are residents of village- Banchahari, P.O.- Parsa, P.S.- Bagaha, District-
West Champaran
3. Sanjay Kumar S/o Dharmdeo Singh (Now Died), resident of village-
Banchahari, P.O.- Parsa, P.S.- Bagaha, District- West Champaran
4. Vijay Kumar Singh, S/o Dharmdeo Singh, resident of village- Banchahari,
P.O.- Parsa, P.S.- Bagaha, District- West Champaran
5. Anish Ahmad, S/o Rasid, Resident of Gali No. 2, Naznin Chauk, P.O. and
P.S.- Bettiah Town, Distt.- West Champaran
6. Nasar Ahmad S/o Late Abdul Rasid, Resident of Gali No. 2, Naznin Chauk,
P.O. and P.S.- Bettiah Town, District- West Champaran
7. Sabir Ahmad, S/o Late Abdul Rasid, Resident of Gali No. 2, Naznin Chauk,
P.O. and P.S.- Bettiah Town, District- West Champaran
8. Ishtakha Ahmad, S/o Late Abdul Rasid, Resident of Gali No. 2, Naznin
Chauk, P.O. and P.S.- Bettiah Town, District- West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shiv Kumar Dwivedy, Advocate
For the Respondent/s : Mr.Zainul Abedin, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-02-2025

Heard learned counsel for the petitioners and
learned counsel for the respondent nos. 1, 2 & 4.

2. The petitioners are aggrieved by the order dated



11.09.2018 passed by the learned Sub Judge-II, Bagaha, West Champaran in Title Suit No. 13 of 2004 whereby and whereunder altogether seven petitions filed on behalf of the petitioners were disposed of without any favourable order.

3. The learned counsel for the petitioners submits that the impugned order is bad in the eyes of law and has been passed in a mechanical manner. The learned counsel further submits that one Ramesh Singh, the husband of the petitioner no. 1 and the father of the petitioner nos. 2 and 3 filed Title Suit No. 13/2004 before the learned Sub Judge-II, Bagaha against the defendants for specific performance of contract on 29.03.2004. The defendants appeared and filed their written statement. During pendency of the suit, sole plaintiff fell seriously ill and died on 03.05.2011. Thereafter, the legal heirs of the plaintiff got themselves impleaded in his place. One Dharmdeo Singh, defendant no.1, died on 22.06.2011 and as the petitioners got the knowledge about the death of defendant no.1, the plaintiffs/petitioners immediately filed a substitution petition on 23.07.2011, which was allowed by the learned trial court on 05.08.2011. Thereafter, Tetari Devi, the wife of Dharmdeo Singh, died on 08.05.2015 and the plaintiffs/petitioners again filed a petition for deleting the name of the deceased defendant



Tetari Devi from the column of defendants stating that her legal heirs were already on record as parties. The said application for deletion was allowed vide order dated 29.05.2015 by the learned trial court. The learned counsel further submits that Sanjay Singh, defendant no. 2, the son of Dharmdeo Singh and Tetari Devi, also died and vide order dated 25.10.2010, the learned trial court abated the suit against the defendant no.2, but this was done prior to the appearance of the substituted plaintiffs in the present case. The plaintiffs have no knowledge about the death of Sanjay Singh till orders were passed on 29.05.2015. Thereafter, the plaintiffs/petitioners immediately filed substitution petition, petition for recall of abatement order along with limitation petition on 23.06.2015. A petition was also filed for making amendment in the plaint as it has been found that mistake has occurred in describing the boundary in Schedule II. This petition was also filed on 23.06.2015. All the petitions were dismissed vide order dated 29.01.2018 by the learned trial court for default due to non-prosecution by the plaintiffs/petitioners. The learned counsel further submits that due to negligence on the part of the learned counsel appearing on behalf of the plaintiffs/petitioners, instead of seeking recall of the order dated 29.01.2018, separate applications have been



filed with the same prayer for setting aside the abatement against defendant no.2 and substitution of heirs/legal representatives of deceased defendant no. 2 Sanjay Singh. The learned counsel further submits that the learned trial court has passed the orders mechanically and without considering the fact that earlier no application was moved prior to passing of the order dated 25.10.2010 for setting aside the abatement and it was only observation of the court that since no application was filed for setting aside abatement for defendant no. 2, the suit stands abated against him. The learned counsel further submits that orders dated 04.05.2015 and 29.05.2015 are altogether on different aspects and are not concerned with setting aside of the abatement for defendant no.2 as the order dated 29.05.2015 is concerned with deletion of the name of Tetari Devi and the order dated 04.05.2015 was on some other matters. So, there is apparent error of record in passing the impugned order. The learned counsel further submits that the learned trial court has not considered that the petitioners came on record after death of the original plaintiff and they were not having knowledge about the death of defendant no.2. Further due to lack of knowledge or negligence on the part of the learned counsel appearing on behalf of plaintiffs/petitioners, the petitions have been filed on



which the impugned order dated 11.09.2018 has been passed, whereas proper course should have been for setting aside the order dated 29.01.2018 and, thereafter, no any application. The learned counsel further submits that in any case the impugned order suffers from error of record and could not be sustained.

4. *Per contra*, learned counsel appearing on behalf of the respondent nos. 1, 2 and 4 vehemently opposes the submission made on behalf of the petitioners. The learned counsel submits that once the application filed by the petitioners for setting aside the abatement has been dismissed for default, no further application could be maintained. The learned counsel further submits that the petitioners want to linger on the matter and for this reason they have been filed these types of applications. The learned counsel further submits that the petitioners were ill-advised in filing the application dated 23.06.2015 to recall the order dated 25.10.2010, instead of filing application under Order 22 Rule 9 of the Code of Civil Procedure for setting aside the abatement and further mistake was committed in not seeking the recall of the order whereby and whereunder the application dated 23.06.2015 was dismissed for default vide order dated 29.01.2018. Thus, learned counsel submits that the learned trial court has not committed any



illegality or irregularity in passing the impugned order.

5. Perused the record.

6. Having regard to the submission made on behalf of the parties, it becomes clear that there has been some error on record in passing the impugned orders since the learned trial court did not discuss the orders dated 25.10.2010, 04.05.2015 and 29.05.2015 and merely disposed of the applications without any discussion and without considering the fact that whether the orders mentioned in the impugned order were relevant for the purpose of disposal of the applications filed on behalf of the petitioners or not.

7. Therefore, without further going into the merits of the case, the impugned order dated 11.09.2018 passed in Title Suit No. 13/2004 by the learned Sub Judge-II, Bagaha, West Champaran is set aside and the matter is remanded to the learned trial court for passing speaking order afresh on the petitions mentioned in the impugned order dated 11.09.2018, within a period of one month from the date of receipt/production of a copy of this order.

8. The learned trial court is also directed to take up the Title Suit No. 13/2004 for disposal as expeditiously as possible since it is an old matter.



9. With the aforesaid observations and directions,
the present petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2025
Transmission Date	NA

