

Patna High Court - Orders

Vishwanath Mahto And Ors vs Birbahadur Mahto And Ors on 8 March, 2019

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No.379 of 1992

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VISHWANATH MAHTO and ORS

... .. Appellant

Versus

Birbahadur Mahto and Ors

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Pandit Jee Pandey

For the Respondent/s : Mr.Arbind Kumar Sharma

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

13 08-03-2019 Heard both sides on I.A. No.5524 of 2018 which is filed on behalf of the appellants to expunge the name of Vishwanath Mahto, the sole appellant who died on 15.07.1998 and substitute his only son, Rajendra Mahto.

I.A. No.5525 of 2018 is filed for condonation of delay in filing the substitution petition and reply to the substitution petition is filed on behalf of the respondents stating that Vishwanath Mahto died leaving behind two sons namely, Rajendra Mahto and Jogindra Mahto and widow namely, Sunaina Kuer but Rajendra Mahto with dishonest intention did not implead the widow and one son of Vishwanath Mahto. A rejoinder to the reply is also filed stating that wife of Vishwanath Mahto predeceased him and Vishwanath Mahto got only one son. Jogindra Mahto is not the son of Vishwanath Mahto.

Patna High Court SA No.379 of 1992(13) dt.08-03-2019 Learned counsel for the appellants submits that it is inter se dispute between the legal heirs of late Vishwanath Mahto. If Jogindra is the son of Vishwanath Mahto and Sunaina Kuer is widow of Vishwanath Mahto, let them file appropriate petition.

Having considered the submission of both sides, it is evident that Vishwanath Mahto died and his son, Rajendra Mahto filed substitution petition stating that Vishwanath Mahto died. His wife predeceased him and Vishwanath Mahto got only one son, namely, Rajendra Mahto. If Jogindra Mahto is another son of Vishwanath Mahto and Sunaina Kuer is the widow of Vishwanath Mahto, let them file appropriate petition for resolution of the disputes with regard to the legal heirs of Vishwanath Mahto.

Learned counsel for the appellants submits that appellant No.1 was the sole pairvikar of the case and his son, Rajendra Mahto was not aware about the pendency of the Second Appeal. When the case was listed for orders, learned counsel for the appellants knew this fact and informed accordingly.

Thereafter, the substitution petition is filed.

Taking into consideration the aforesaid facts, I find that the proposed appellant sufficiently explained the reasons for Patna High Court SA No.379 of 1992(13) dt.08-03-2019 such delay. Accordingly, the delay is condoned. Let the name of appellant No.1 be expunged from the memo of appeal and the name of his son, Rajendra Mahto is substituted in his place who has already appeared. I.A. No.5524 of 2018 and I.A. No.5525 of 2018 stands disposed of.

List this case on 05.07.2019 under the appropriate heading.

(Prabhat Kumar Jha, J) Saurabh/-

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