

*In the court of Additional District Judge-II
Danapur, Patna.*

Title appeal 4/99

ORDER

05/08/19: Attendance on behalf of both the parties have been filed. The record is fixed for order on the petition of appellant Baijnath Singh filed under order-XXII, rule-4 read with section-151 of code of civil procedure and the rejoinder against this petition filed on behalf of respondent number-2A, 2B & 2C and the same is here under :

The learned Counsel of both the parties have already been heard.

According to the petition of the appellant, appellant number-6 namely Lemas Singh, who was younger brother of appellant number-1 (petitioner), died on 26th of february 2019 but as he was living separately, the appellant could only know this fact during the argument in this case. It is further stated in the petition that Lemas Singh died leaving behind his only successor, his wife Mamta Devi and therefore, the appellant has filed this petition for substitution of name of Mamta Devi in place of name of appellant number-6.

The respondent number-2A, 2B, 2C, in their rejoinder, has mentioned that the provision quoted in the petition is not applicable on the death of the appellant and the appellant has left the name of two daughters of Lemus singh namely Chandni & Kajal who are also the legal heirs of the deceased and therefore, required to be substituted in the memo of appeal. On these grounds, the learned advocate appearing on behalf of respondent has prayed for rejection of appellant's petition.

*The court agrees with the contention of respondents that the provision under which the appellants have filed this petition is wrong and the appropriate provision, in present fact, is Order-XXII, rule-3 of code of civil procedure. But, it is settled law that mislabelling of provision would not ipso facto be ground for rejection of petition and this proposition also finds reference in the Judgement of the Hon'ble Supreme Court in the case of **P.K Palanisamy Vs N.Arumugham & another** (2009). Therefore, only on this ground, petition of the appellant cannot be rejected. So far as the other ground is concerned, both the parties have filed petition and rejoinder supported with affidavitt and hence, the Court concludes that either of the two facts is wrong.*

In view of the above situation, this Court directs the appellant to file requisite of registered & Nazarat notice of application for substitution of legal heir of appellant number-6 Lemas Singh to be issued for appearance of Mamta Devi and only after her appearance or otherwise; the order of substitution of legal heir of appellant number. 6 namely Lemas Singh shall be passed.

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Put up on 22 /08/19 for hearing on petitions pending.

Dictated.

*ADJ-II
Danapur, Patna.*