

(2001) 07 PAT CK 0124

In the Patna High Court

Case No : Civil Revision No. 1645 of 2000

Most. Gangia Kuer and Others

APPELLANT

Vs

Dinesar Singh and Others

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Citation : (2001) 4 PLJR 240

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—In spite of valid service of notice on the opposite party, nobody has appeared on behalf of them.

2. The present revision application has been filed against the order dated 17.6.2000 passed in Title Suit No. 140 of 1998 by Munsif IV, Chapra by which prayer made on behalf of the Petitioner to delete the name of Ramesar Singh, who was dead prior to institution of the suit, and for substitution of his heirs as Defendants, has been rejected.

3. Admitted fact is that Ramesar Singh was dead prior to institution of the suit. In that view of the matter, there was no question of either abatement of the suit or substitution of his heirs and legal representatives. As Ramesar Singh was dead prior to institution of the suit, his name should have been expunged from the array of Defendants. So far as the question of bringing the heirs of Ramesar Singh on record is concerned, that was a case of addition of parties and the Court below should have considered as to whether the name of his heirs should be added or not. Thus, the Court below has committed jurisdictional error in holding that the suit has abated for non-substitution of heir and legal representatives of Ramesar Singh.

4. Accordingly, the impugned order is set aside. The Court below is directed to consider as to whether the heirs of said Ramesar Singh should be added as

Defendants in the suit or not after hearing the parties.

5. In the result, the civil revision application is allowed.