
(2006) 04 PAT CK 0080
In the Patna High Court
Case No : Civil Revision No. 27 of 2005

Pawan Kumar Jha

APPELLANT

Vs

Raghav Jha and Others

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2006) 3 PLJR 44

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Shambhu Sharan Singh, for the Appellant; Tara Kant Jha, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties. For the reasons disclosed, the limitation is condoned.

2. The present application is by one Pawan Kumar Jha against an order passed by the trial Court in a partition suit whereby the trial Court has refused to recall his" earlier order to proceed ex-parte against certain defendants. The opposite parties have appeared and it is asserted that the petitioner Pawan Kumar Jha is nobody in the suit. This is asserted on the basis of the plaint where defendant No. 5 allegedly was Pranab Kumar Jha who by order of the trial Court dated 28.3.2000 was deleted on his death. Thus, Sri Tarakant Jha, Senior counsel on behalf of the opposite party submits that there is no one as defendant No. 5 in the case as per judicial order of the trial Court. That being so, the present petitioner who asserts that he is the bona fide Defendant No. 5 has no locus standi even to maintain this application.

3. Heard the parties.

4. The petitioner asserts that a bare reference to the plaint would show that original defendant No. 5 whose name as Pawan Kumar Jha was corrected to

Pranab Kumar Jha and subsequently order obtained from the trial Court to delete Pranab Kumar Jha as a consequence of his death as a child itself. He substantiates his assertion by reference to the summons issued and in the newspaper notice published under the orders and authority of the Court, both of which clearly show that defendant No. 5 was Pawan Kumar Jha.

5. This appears to be a serious matter as to how notice was issued in the name of Pawan Kumar Jha if he was never a party as per plaint. This only goes to show that he had appeared as a party but his name was altered in course of proceeding not on the basis of any judicial order but otherwise. His name having been altered the altered person was shown to be dead and deleted. This requires investigation by the trial Court. The plea taken by the petitioner before this Court is that in fact he is the son of Amar Nath Jha. The fact denied by the opposite party with reference to order passed u/s 125 Cr. P.C. whereby Pawan's mother was held not to be the legally wedded wife of Amar Nath Jha.

6. Whatever be the position, it is for the trial Court to enquire into the matter and come to a finding as to how if Pawan Kumar Jha was never in the plaint notices and summons were issued in his name. If name was altered who did it and with whose permission. Till such matter is decided further proceedings in the trial Court shall remain stayed and the petitioner shall have a right to participate in such proceedings. I, accordingly, set aside the order and allow this civil revision application with the aforesaid direction.