

In the Court of Sub-Judge, Teghra

Title Suit No. 84 of 1994

Mostt. Pachya Devi Vs. Ram Swaroop Mahto & Others

1. O	Date of Order of proceeding	Order with signature of the Court	Office action taken with date
1	2	3	4
	15.07.2023 (1)	<p><u>Petition dt. 22.01.2022 for transposition of Defendants to plaintiff</u></p> <p>Parties are present, record has been produced <i>for order on the petition (supported with affidavit) dated 22.01.2022 under Order 1 Rule 10(2) read with Order 23 Rule 1-A of the CPC on behalf of Defendant No. 1(A) Suresh Mahto, Defendant No. 6 Lal Bahadur Mahto and Defendant No. 7 Amlı Devi</i>. The rejoinder has been filed on behalf of the plaintiff on 21.04.2022. No rejoinder is filed on behalf of any defendants. The parties are heard at length, previously.</p> <p>Learned Advocate on behalf of petitioner defendants (Suresh Mahto, Lal Bahadur Mahto & Amlı Devi) have submitted that the plaintiff and other sets of the defendants are in collusion and concert of each other to put these defendants in wrongful loss and put themselves in wrongful gain. Manohar Mahto died after separation from his rest three brothers leaving behind his widow Dulari Kumri as his sole legal heir and successor and she inherited the entire 1/4 share of land. Dulari Kumri used to live with Hari Nandan Mahto and his sons and being satisfied with their sincere service, she executed a registered deed of gift dated 05.06.1965 in favour of Ram Swaroop Mahto, Ram Chandra Mahto, Lal Bahadur Mahto & Satya Narayan Mahto with respect to 6 Bigha 12 Katha 13*1/4 Dhur land and donee accepted the gift and come in possession over gifted land. The main motive of plaintiffs and other parties to the suit to partition the gifted land among themselves. The plaintiffs have got no interest in this suit and they are not taking proper interest in the suit and practically they abandoned the suit which necessitated these defendants to file this petition for transposition of their name in category of plaintiff so that</p>	

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complete proper and effective adjudication of the case may be done. The photocopy of the judgment of the Hon'ble Patna High Court [*Basudhanand Pandey Vs. Vidyanand Pandey & Ors. reported as 2006 (4) PLJR 74*] has been filed by the petitioners in the support of their petition.

On the other side, Learned Advocate for the plaintiffs has stated that the case of the plaintiff is in conflict with the said defendants which is established from their common written statement dated 31.07.2001 wherein they have stated that plaintiffs are not entitled to any relief and as such the suit is fit to be rejected. The interest of the plaintiffs and the petitioner defendants are not identical and they are in distinct and contrary to the each other. There is no case of either party that the suit was instituted in the name of wrong person as plaintiff nor there is any case that the plaintiffs at any point of time subsequent to the institution of the suit have abandoned the suit against all or any of the defendants or abandoned any part of his claim and as such it is not fit to transpose the petitioner's defendants to the category of the plaintiff. Hence, the petition dated 22.01.2022 under reply is fit to be rejected.

I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It appears that the suit is brought by the plaintiffs for partition of their joint family properties mentioned in the plaint.

Order 23, Rule 1-A, C.P.C., which was inserted by the Amending Act 104 of 1976 reads as follows:—

“Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the court shall, in considering such application, have due regard to the question whether the application has

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a substantial question to be decided as against any of the other defendants”.

In the matter of **R. Dhanasundari @ R. Rajeswari vs A.N. Umakanth And Ors.** reported as **2006 SCC Online Mad. 913 & 2006 (5) CTC 440**, which has been affirmed by the Hon'ble Supreme Court (Division Bench) on 06.03.2019 in **R. Dhanasundari Vs. A.N. Umakanth [(2020) 14 SCC 1]**, Hon'ble The Madras High Court enumerated the conditions of transposition as follows -

"14. From a perusal of the Rule and the ratio laid down in the aforesaid decisions of this Court, the following tests appear to hold the field, in deciding the right of a defendant to transpose himself as a plaintiff:

(a) Whether the defendant who seeks transposition has substantial question to be decided?.

(b) Whether such substantial question has to be decided against any of the other defendants?

(c) Whether the defendant seeking transposition has an identity of interest along with the plaintiff as against other defendants?

(d) Whether the success of the plaintiff would result in the automatic success of the defendant who seeks transposition?

(e) Whether the withdrawal or abandonment by the plaintiff, of the suit, results in some vested right of the defendant getting defeated?

The above tests are only illustrative and not exhaustive. "

Applying the above tests, it is seen in this case that the Defendant No. 1(A) Suresh Mahto, Defendant No. 6 Lal Bahadur Mahto and Defendant No. 7 Amli Devi who have sought to transpose

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themselves as plaintiffs filed written statement on 31.07.2001 in conflict with the plaint. The petitioner defendants filed an objection of the plaint by way of their written statement. The plaintiff and petitioner defendants have conflicting interest. The petitioner defendants have not a substantial question to be decided as against other defendants. The petitioner defendants have not an identity of interest along with the plaintiff as against other defendants. If the plaintiffs contest the suit and succeed, such success would not have automatically enured to the benefit of the petitioner defendants. Therefore, the petitioner defendants can not be said to have an identity of interest with the plaintiffs. The plaintiff did not file any petition for withdrawal of the suit. The plaintiffs have filed attendance or pairvi each and every date in this suit. So, it can not be said that the plaintiffs have abandoned the suit.

Under such circumstances, it is the considered opinion of this court that the petitioner defendants have not positive answer of the aforesaid tests and no merits have been found in the petition dated 22.01.2022 filed by the petitioner defendants to transpose themselves to the category of plaintiffs. **Hence, the petition dated 22.01.2022 under Order 1 Rule 10(2) read with Order 23 Rule 1-A of the CPC on behalf of Defendant No. 1(A) Suresh Mahto, Defendant No. 6 Lal Bahadur Mahto and Defendant No. 7 Amla Devi is hereby dismissed.**

Put up on 19.08.23 for further proceeding.


(Sushil Prasad)

Sub-Judge

Teghra (Begusarai)