

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8891 of 2011**

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Bibha Devi

.... .... Petitioner/s

Versus

Ram Kishore Prasad Srivastava

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

- 4      05-11-2015    1)      Heard the learned counsel for the petitioner on the interlocutory application No.11 of 2012.
- 2)      This application has been filed for substitution of the legal representatives of the plaintiff respondent No.1 who was the sole plaintiff in the Court below.
- 3)      In view of the submission of the learned counsel for the petitioner and the statements made in this interlocutory application, the interlocutory application is allowed and the legal representatives of the deceased respondent No.1 are substituted in place of the deceased respondent No.1 after deleting his name.
- 4)      Heard the learned counsel for the petitioner.
- 5)      This application under Article 227 of the Constitution of India has been filed by the petitioner, Bibha Devi, against the order dated 07.03.2011 passed by the learned Munsif, Sadar, Motihari in Misc. Case No.14 of 2008 whereby the Court below

rejected the application filed by the petitioner for being transposed as the petitioner in the Misc. Case No.14 of 2008 which was filed by the respondent No.5, Umesh Mukhiya.

6) It appears that the plaintiff respondent No.1, Ram Kishore Prasad Srivastava filed eviction suit No.3 of 2005 for eviction of the defendant respondent No.2 to 6 and their mother Jaleshwari Devi. The said suit was decreed ex.parte. Thereafter, only Umesh Mukhiya filed the aforesaid Misc. case under Order 9 Rule 13 CPC for setting aside the ex.parte decree making his brothers and mother Jaleshwari Devi as opposite party including the plaintiff respondent herein. During the pendency of the said Misc. case, the mother Jaleshwari Devi died and then the present petitioner and her other sisters were substituted in the eviction suit. Thereafter, the application was filed by this petitioner for being transposed as a petitioner in Misc. case on the ground that Umesh Mukhiya, the petitioner and other brothers have colluded with the plaintiff respondent and are trying to withdraw the Misc. case, therefore, the petitioner may be permitted to pursue the Misc. case. By the impugned order, the Court below has rejected this prayer.

7) The learned counsel for the petitioner submitted that the petitioner was the necessary party and because the brothers and other sisters have colluded with the plaintiff, if she is not



transposed and allowed to pursue Misc. case, she suffer loss and irreparable injury. However, at the time of hearing of this application, the learned counsel submitted that in fact the defendant respondents were real owner of the property and there was no relationship of landlord and tenant between them but the Court below taking advantage of the fact that no written statement was filed, decreed the eviction suit. In such circumstances, the petitioner may be allowed to pursue the Misc. case.

**8)** It is admitted fact that the plaintiff respondent No.1 filed the eviction suit against Jaleshwari Devi and his sons who were respondent No.2 to 6 specifically alleging that they are the tenant. The said suit was decreed. In Misc. case filed by Umesh Mukhiya, the present petitioner was substituted on the death of Jaleshwari Devi. It may be mentioned here that the suit was not a title suit and question of title was not at all involved. The petitioner of the Misc. case was one of the tenant. It is not the case of the present petitioner of this writ application or the petitioner of the Misc. case that in fact they are not tenant rather present petitioner is the tenant who is residing in the suit premises. In this writ application or in the application filed by the petitioner for being transposed as petitioner in the Misc. case, there is no such statement that this petitioner is either owner of the property

or in fact is in possession of the suit premises in the capacity of a tenant.

9) Further, Order 1 Rule 10 read with Order 23 Rule 1A CPC provides that the Court may at any stage of the proceeding add any person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settled all the questions involved in the suit. Order 23 Rule 1A CPC speaks about the withdrawal of the suit. It is admitted fact that in the main eviction suit, this petitioner of this writ application was not even defendant. He has been substituted only in place of her mother at the instance of her brother in the present Misc. case. Now, therefore, the present petitioner cannot be transposed in place of the petitioner, Umesh Mukhiya, who had filed the Misc. case. In my opinion, therefore, the Court below has rightly rejected the application filed for her.

10) **Accordingly, I find no merit and thus this writ application is dismissed.**

Sanjeev/-

**(Mungeshwar Sahoo, J)**

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