

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.632 of 2017

1. Kapilmuni Sah Son of Late Jagdish Sah.
2. Rajeev Kumar, Son of Satish Kumar. Both residents of Village- Premganj, P.S.+ P.O.- Lalganj, District- Vaishali.

... .. Appellant/s

Versus

1. Shivpati Devi, W/o Late Pradhuman Sah, Resident of Village- Premganj, P.S. + P.O.- Lalganj, District- Vaishali.
2. Bhagwan Shankar @ Ajay Kumar, Son of Late Pradhuman Sah, Resident of Village- Basant Lal @ Kasba, Mohalla- Premganj, P.S.+ P.O.- Lalganj, District- Vaishali.
3. Birendra Sharma, Son of Laxman Sharma, Resident of Village- Agarpur, P.S.+ P.O.- Lalganj, District- Vaishali.
4. Rajesh Kumar Shukla, Son of Late Wakil Shukla, Resident of Village- Khanjaha Chak, P.O.- Khanjaha, P.S.- Lalganj, District- Vaishali.
5. Smt. Aasha Devi, W/o Moti Rai, Resident of Village- Jalalpur, P.O.- Jalalpur, P.S.- Lalganj, District- Vaishali.
6. Munesh Kumar, Son of Parasnath Chaudhary.
7. Tripurari Kumar, Son of Late Shiv Shankar Pd. Chaudhary, Resident of Village- Basant Lal @ Kasba Lalganj, Mohalla- Maida Toil, P.O.+ P.S.- Lalganj, District- Vaishali.
8. Santosh Kumar, Son of Late Ambika Pandey, Resident of Village- Agarpur, P.O.+ P.S.- Lalganj, District- Vaishali.
9. Prabhat Kumar, Son of Ramnath Prasad Sah, Resident of Village/Mohalla- Pranganj Ward No. 7, P.O.+ P.S.- Lalganj, District- Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar Jha Mr. Rakesh Kumar Soni
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 15-11-2017 Heard learned counsel for the parties.

2. By the impugned order, dated 16.02.2017, passed by the learned Sub-Judge-VIII, Vaishali in Title Suit No. 147 of 2008, a petition filed on behalf of Respondent No.9 (intervener/defendant) before the Court below for transposing



him as a plaintiff has been allowed.

3. Learned counsel for the petitioners has submitted that the plaintiff/Respondent No.1 had withdrawn the said suit and an order on her application for withdrawal was already passed by the Court below on 15.05.2014, thereby dismissing the suit. According to him, there was no question of transposition of the intervener-respondent as plaintiff since the suit itself was not surviving.

4. It appears that in the said title suit, respondent No.9 had intervened with a claim that the plaintiff had relinquished the suit property in his favour and on the basis of this plea, he was allowed to intervene. The plaintiff, subsequently, filed an application for withdrawal of the suit, which was allowed by the Court on 15.05.2014. On the same day, the respondent No.9 filed an application for recall of the said order, dated 15.05.2014, and applied for his transposition as plaintiff by filing an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code).

5. The Court below has allowed the said petition.

6. As has already been noticed, without recalling the order of dismissal of the suit as withdrawn, no order of transposition could have been passed and that is the main ground of challenge



to the impugned order.

7. The submission so made on behalf of the petitioners has no force, in view of the clear language of the Order 23 Rule 1A of the Code, which reads thus:-

"Order 23 Rule 1A. When transposition of defendants as plaintiffs may be permitted.- 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 I, the court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

8. The aforesaid Rule specifically provides that where a suit is withdrawn or abandoned by a plaintiff under Rule 1 and the 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 applicant has a substantial question to be decided as against any of the other defendants.

9. It is evident thus, that while considering an application under Order 1 Rule 10 of the Code for transposition as plaintiff by defendant, the Court is to have due regard to the question whether the persons seeking transposition as substantial question to be decided against any of the other defendants or not. The clear purpose of Order 23 Rule 1A is to allow the



defendant to transpose himself as a plaintiff where the suit is withdrawn and substantial question to be decided as against the defendants remained to be decided.

10. The order, in my view, is within jurisdiction and has rightly been passed.

11. This application has no merit and it is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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