

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.413 of 2018

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1. Sanjay Pandey S/o Kalika Pandey
 2. Ravi Shankar Pandey S/o Kalika Pandey
 3. Vijay Shankar Pandey S/o Kalika Pandey All are R/o Village Pipri, P.S. Sasaram, District - Rohtas.

.... Petitioners

Versus

1. Hari Shanker Dwivedi S/o Raghunandan Dwivedi
2. Paras Nath Dubey S/o Ram Nath Dubey @ Rag Nath Dubey
3. Sunil Kumar Dubey Minor S/o Paras Nath Dubey through guardian
4. Anil Kumar Dubey S/o Paras Nath Dubey through guardian R/o Village - Tetari, P.S. - Sasaram, District - Sasaram.
5. Gauri Shankar Tiwari S/o Late Janki Tiwari
6. Vinod Tiwari Minor S/o Gauri Shankar Tiwari through guardian R/o Village - Chhotki Chenari, P.S. Shivsagar, District - Rohtas.
7. Uma Shankar Pandey S/o Late Kalika Pandey
8. Daya Shankar Pandey S/o Late Kalika Pandey
9. Rang Nath Tiwari S/o Ram Swaroop Tiwari R/o Village - Pipri, P.S. Sasaram, District - Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ashutosh Tripathy

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 12-10-2018

Heard learned counsel for the petitioner.

The petitioner filed this civil miscellaneous petition to quash the order dated 20.01.2018 passed in Title Suit No.67 of 1985/185/1998 by which the learned Sub-Judge-VIII, Sasaram rejected the intervener petition of the petitioner.

The facts relevant for disposal of the case in short is that Mathura Pandey filed pauper Suit No.67/1985. Later on Pauper Suit No.67/1985 was converted into Title Suit



No.185/1998, in which Mathura Pandey sought relief for setting aside sale deed executed by him in favour of Gauri Shankar Tiwari and Paras Nath Dubey, respondent nos.5 and 2 respectively. During the pendency of the aforesaid suit, one Hari Shankar Dubey is said to have fraudulently got a gift deed executed from Mathura Pandey with regard to the properties sold by him in favour of Gauri Shankar Tiwari and Paras Nath Dubey. Kalika Pandey happens to be the nephew of Mathura Pandey and Mathura Pandey during his lifetime disclosed on a blank paper that after his death Kalika Pandey should perform Puja and offer Bhog to the God. Kalika Pandey filed Title Suit No.192/1998 for restraining Hari Shankar Dwivedi from performing Puja and offer Bhog to the God. During pendency of the suit, both the suits bearing Title Suit No.185/1998 and Title Suit No.192/1998 were amalgamated as claimed by the petitioner. Thereafter, the petitioner filed petition to transpose him as plaintiff in Title Suit No.185 of 1998 and by the impugned order dated 20.01.2018 learned Sub-Judge-VIII, Sasaram rejected the petition of the petitioner. Being aggrieved by the aforesaid order, the petitioner filed this civil miscellaneous petition.

Learned counsel for the petitioner submits that learned Sub-Judge-VIII, Sasaram has illegally and erroneously rejected



the petition of the petitioner for transposing him as plaintiff in Title Suit No.185/1998 on the ground that after death of Mathura Pandey, his legal heir was substituted in the year 2005 itself and the petitioner did not file any document showing himself as legal heir of Mathura Pandey. It is submitted that since the petitioner represents the estate of Mathura Pandey by way of his last desire as written on the plain paper, the petitioner is entitled to be transposed as plaintiff in Title Suit No.185/1998 but I find no force in the submission of learned counsel for the petitioner since the Order 23 Rule 1(A) of the C.P.C. provides about transposition of defendant as plaintiff. It says that “*where the 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 applicant has a substantial question to be decided as against any of the other defendants*”. In that event, the defendant may be transposed as plaintiff. It appears that Mathura Pandey filed the suit for setting aside the sale deed executed by him in favour of Gauri Shankar Tiwari and Paras Nath Dubey. Petitioner is not even defendant in Title Suit No.185 of 1998. During pendency of the suit Mathura Pandey is said to have executed a deed of gift with regard to the properties which was



sold by him earlier in favour of Gauri Shankar Tiwari and Paras Nath Dubey in favour of Hari Shankar Dwivedi but thereafter Kalika Pandey, the father of the petitioners filed Title Suit No.192 of 1998 seeking relief for injunction restraining Hari Shankar Dwivedi from offering Puja and Bhog to the God. During the lifetime of Mathura Pandey, Mathura Pandey is said to have written on plain paper that after his death Kalika Pandey shall offering prayer and Bhog to the God but the petitioners are not legal heir of Mathura Pandey. I find that this is not a fit case for transposition of the petitioner as plaintiff in Title Suit No.185 of 1998 and the learned Sub-Judge-VIII, Sasaram has rightly dismissed the petition of the petitioner.

Accordingly, this civil miscellaneous petition is dismissed as devoid of merit.

(Prabhat Kumar Jha, J)

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