

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.233 of 2019

Harishchandra Chaudhary aged about 69 years (Male) Son of Kakhan Chaudhary Resident of- Amghatta Road, Ward No.1, P. O. & P.S.- Dumra, permanent resident of village & P. O.-Bajipur, P.S.- Bajpatti, both District-Sitamarhi

... .. Petitioner (Plaintiff)

Versus

1. Ram Bachan Devi age 70 years (F) Wife of Late Amir Thakur
2. Shambhu Thakur age 60 years (M) Son of Late Amir Thakur
3. Prema Devi age 43 years (F) Wife of Shambhu Thakur
4. Masomat Krishna Devi age 65 (F) Wife of Late Rabindra Sharma @ Chaudhary
5. Rajesh Kumar age 42 years (M) Son of Late Rabindra Sharma @ Chaudhary
6. Ram Pyari Devi age 43 years (F) Wife of Late Saket Bihari Chaudhary

R/o Village and P.O.-Bajitpur, P.S.-Bajpatti, District-Sitamarhi.

7. Munni Devi age 30 years (F) daughter of Late Rabindra Sharma @ Chaudhary Wife of Jai Prakash Singh R/o Village-Motipur, Anjana Kote, P.S.- Motipur, District-Muzaffarpur
8. Vandana Devi age 35 years (F) Daughter of Late Rabindra Sharma @ Chaudhary Wife of Mukesh Singh R/o Village- Morsand, P.S.-Runnisaidpur, District-Sitamarhi
9. Reena Devi age 32 years (F) daughter of Late Rabindra Sharma @ Chaudhary Wife of Chandra Bhushan Singh R/o Village-Gorigama, P.S.- Runnisaidpur District-Sitamarhi
10. Smt. Ansuiya Devi age 40 years (F) Daughter of Late Saket Bihari Chaudhary Wife of Shri Bhushan Kishore Singh R/o Village-Malipur, Pakari, P.O.-Bhasar Machaha, P.S. and District-Sitamarhi
11. Sukriti Devi age 44 years (F) Daughter of Late Saket Bihari Chaudhary, Wife of Madhweshwar Chaudhary R/o Village-Shankarpur, P.O.-Kumma, P.S.-Sursand, District-Sitamarhi
12. Ram Daresh Rai age 40 years (M) Son of Late Dorahi Rai R/o Village-



Bajitpur, Tole Bantara, P.O. Bajitpur, P.S.-Bajpatti, District-Sitamarhi

... .. Respondents

Appearance :

For the Petitioner : Mr.Ashok Kumar Jha, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 22.11.2018 passed by the District Judge, Sitamarhi in Miscellaneous Case No. 32 of 2018 whereby the petition filed by the petitioner under Section 24 of the Civil Procedure Code (for short 'CPC') with regard to transfer of Partition Suit No. 51 of 2011 and Execution Case No. 3 of 2018 pending in the court of Sub-Judge, Pupri, Sitamarhi to Sub-Judge, Sitamarhi has been rejected.

3. Learned counsel for the petitioner has contended that the impugned order dated 22.11.2018 has been passed by the court below without appreciating the application filed by the petitioner for transfer of the partition suit and execution case from the court of Sub-Judge, Pupri, Sitamarhi to Sub-Judge, Sitamarhi on medical grounds. He has contended that



the court below ought to have considered that the petitioner is a senior citizen aged about 71 years and is suffering from heart disease and, thus, it ought to have transferred the case from the court of Sub-Judge, Pupri, Sitamarhi to Sub-Judge, Sitamarhi in light of the provision prescribed under Section 24 of the CPC.

4. It is not in dispute that territorial jurisdiction of the suit is at Pupri. A vague plea was taken by the petitioner that he is suffering from heart disease and, thus, the case be transferred from Pupri to Sitamarhi. It is true that Section 24 of the CPC confers a discretionary power on the court to transfer any suit from one court to another. However, such discretionary power has to be exercised only in appropriate cases. The judicial discretion should not be exercised on whims and fancies. In certain cases, such transfer may be warranted on medical ground or for administrative reason. However, considering the plea of the petitioner, if the court below came to the conclusion that the transfer was not warranted from one court to another, no illegality can be found with the exercise of such judicial discretion, especially when the medical certificates, which have been brought on record before him by the petitioner, do not reflect any serious ailment of the petitioner.



5. In that view of the matter, I see no reason to interfere with the order passed by the court below. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2019
Transmission Date	

