

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.1066 of 2020**

**In**  
**Miscellaneous Appeal No.979 of 2010**

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Smt. Usha Kapur W/o Sri Madan Mohan Kapur, D/o Late Srinarayan Mehata, resident of Jail Road Chandbara, Muzaffarpur at present residing at A-66 Sector 17, Noida (U.P.) through Md. Iliyas, aged about 46 years (Male), S/o Md. Idris of Village-Rampur Runnisaidpur, P.O. and P.S. Runnisaidpur, District-Sitamarhi the constituted Attorney of Smt. Usha Kapur.

... .. Petitioner/s

Versus

1. Bhanu Pratap Mehara S/o Late Dayakrishna Mehara, resident of Mohalla-Chandbara Jail Road, Muzaffarpur, P.S. and District-Muzaffarpur at present residing at M-289 Sector 25-Noida (U.P.)
2. Anuradha Mehata, W/o Sri Balmiki Mundkar, D/o Late Rabindranath Mehata, resident of Mohalla-Chandbara Jail Road Muzaffarpur, P.S. and District Muzaffarpur at present residing at Heritage City Flat No. 201, Block No. 36 Gurgaon (Haryana).

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Surendra Kishore Thakur  
For the Opposite Party/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

ORAL ORDER

2      21-01-2021                      Heard learned counsel appearing for petitioner and perused the record along with record of M.A. No. 979 of 2010.

This petition has been preferred for restoration of M.A. No. 979 of 2010 to its original number.

Learned counsel appearing for petitioner (appellant) submits that petitioner (appellant) filed M.A. No. 979 of 2010 for setting aside the order dated 24.11.2010 passed by learned Sub Judge 3<sup>rd</sup>, Sitamarhi in Partition Suit No. 129/10 by which and whereunder the learned Sub Judge 3<sup>rd</sup>, Sitamarhi, refused



to grant interim injunction restraining the defendants from executing any kind of document with regard to the suit property. Learned counsel of the petitioner, further, submits that in the aforesaid M.A. No. 979 of 2010 notices were issued upon respondents (O.P. Nos. 1 and 2) and notice of respondent No. 1 (O.P. No. 1) was served through his learned counsel but respondent No. 1 (O.P. No. 1) did not choose to appear in M.A. No. 979 of 2010 and so far as respondent No. 2 ( O.P. No. 2) is concerned, the notice could not be served upon him and, therefore, the court directed the petitioner (appellant) for publication of notice of respondent No. 2 (O.P. No. 2). Learned counsel of the petitioner (appellant), further, submits that, unfortunately, the aforesaid order of the court could not be communicated to the petitioner (appellant), as a result of which, due to peremptory order dated 29.6.2017, the above stated appeal stood dismissed for non compliance of the Court order. Learned counsel of the petitioner (appellant), further, submits that as soon as petitioner (appellant) got information about the dismissal of the M.A. No. 979 of 2010, petitioner (appellant), immediately, filed this petition and if the M.A. No. 979 of 2010 is not restored to its original number, the petitioner (appellant ) would suffer great loss, which cannot be compensated.



The perusal of record of M.A. No. 979/2010 goes to show that respondent Nos. 1 and 2 (O.P. Nos. 1 and 2) had not appeared in the M.A. No. 979 of 2010 and, therefore, in my view, for disposal of the present petition, there is no need to issue notice to them.

Considering the aforesaid facts and circumstances as well as submissions of the parties, this petition stands allowed and, accordingly, it is ordered that M.A. No. 979 of 2010 be restored to its original number. However, the petitioner (appellant) must comply the order dated 21.7.2011 within six weeks from the date when the court starts fully physical function.

**(Hemant Kumar Srivastava, J)**

Spd/-

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