

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.435 of 2018

Abhay Kumar Pandey son of Late Nand Lal Pandey, resident of Village-
Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur Bihar At present Vijay
Vihar Colony, Near ST. Karens School, Khagaul Road, P.O.- Danapur,
District- Patna, Pin Code- 801503 Bihar.
... .. Petitioner/s

Versus

1. Umrawati Pandey wife of Late Sharda Nand Pandey resident of Village-
Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur (Bihar).
2. Bimlesh Pandey, son of Late Sharda Nand Pandey resident of Village-
Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur (Bihar).
- 3.1. Anil Kumar Pandey Son of Late Vijaya Nand Pandey Resident of Village-
Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur (Bihar).
- 3.2. Munni Devi Daughter of Late Vijaya Nand Pandey and Wife of Sri Kamlesh
Ojha Resident of Village- Dekuli, P.S.- Brahampur, District- Buxar (Bihar).
- 3.3. Manju Devi Daughter of Late Vijaya Nand Pandey and Wife of Late Saral
Pathak Resident of Village- Niyazipur, P.S.- Brahampur, District- Buxar
(Bihar).
4. Ram Sakal Singh, son of Late Munna Singh, resident of Village and P.O.-
Keshari, P.S.- Dhanjaie, District- Bhojpur (Bihar).
5. Mritunjay Kumar Pandey, son of Late Sharda Nand Pandey. resident of
Village- Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur (Bihar).
6. Sunil Kumar Pandey, son of Late Sharda Nanda Pandey resident of Village-
Gopalpur, P.O. and P.S.- Shahpur, District- Bhojpur (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Om Prakash Upadhyay, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

13 07-02-2023

Heard learned counsel for the petitioner.

This application has been filed for setting aside the
Order dated 25.04.2017 passed in Title Suit No. 327 of 2005 by
learned Subordinate Judge, Jagdishpur, Bhojpur by which he has
allowed the petition dated 16.08.2016 filed on behalf of two
heirs of the deceased sole plaintiff, namely, Sharda Nand Pandey
to be impleaded in his place as Plaintiff and other two major



legal heirs to be impleaded as Defendants.

Learned counsel for the petitioner submits that respondent Nos. 2 and 3, namely, Umrawati Pandey and Bimlesh Pandey filed a petition dated 16.08.2016 under Order XXII Rule 3 of the C.P.C. for impleading them as plaintiffs and other heirs, namely, Mritunjay Kumar Pandey and Sunil Kumar Pandey to be impleaded as defendants. Defendant No. 3 in the suit is the petitioner herein. He further submits that learned trial Court while passing the impugned order has not considered the provision of law properly.

Further, he submits that in the case in which some of the legal representatives of the sole deceased plaintiff are intended to come on the place of deceased plaintiff, his remedy lies only under the provision of Order 1 Rule 10 C.P.C. and not under Order 22 Rule 3 of the Code of Civil Procedure. Accordingly, the proper provisions of Code of Civil Procedure has not been applied in this case.

The law is well settled that procedure is handmaid of the law and it is made for achieving the last result of justice between the parties and also is part of principle of natural justice. The law is also well settled that only mentioning the wrong provision will not make the impugned order illegal as the



Court has power to treat the same petition within the appropriate provision of the law.

Under the provision of Rule 10(2) of Order 1, the Court may add the name of any person to the suit who ought to have been joined, either as plaintiff or defendant, or whose presence before the Court is necessary.

Even if an application has been filed under order 22 Rule 3, labelling of the application being misconceived, as per the petitioner, the Court should ignore the labelling of the application as one under Order 22 Rule 3 and treat the same as one filed under Order 1 Rule 10 C.P.C. if the ingredients thereof are satisfied.

In view of the provisions of law as discussed above and also in the facts and circumstances, the impugned order does not require any interference and accordingly, dismissed. However, if the added respondents file application for transposing them as plaintiffs, the Court below shall pass the appropriate order in accordance with law.

With the aforesaid observation this Miscellaneous Application is disposed of.

(Sunil Dutta Mishra, J)

saaurabhkr/-

U			
---	--	--	--

