

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.303 of 2021**

Harendra Prasad Chaurasiya @ Harendra Chaurasia, aged about 81 years
(Male) Son of Late Bhagirath Prasad Chaurasiya Resident of Village- Shyam
Pur, P.O. and P.S.- Adapur, District- East Champaran.

... .. Petitioner/s

Versus

Sangeeta Kumar @ Sangeeta Devi @ Gunjan Lata @ Gunjan Sinha, Wife of
Dr. Anil Sinha, Daughter of Late Bhola Prasad Resident of Village- Shyam
Pur, P.O. and P.S.- Adapur, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Shankar Shrivastava, Advocate
For the Respondent/s	:	Mr. Md. Waliur Rahman, Advocate with Mr. Uday Shankar Sharan Singh, Advocate and Mr. Nishant Kumar Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

7 05-04-2023 Heard learned counsel for the parties.

2. Learned counsel for the petitioner submits that against the impugned order dated 19.03.2021 passed in Miscellaneous Case No. 04 of 2016 by the learned Additional District and Sessions Judge-XXII, Motihari, East Champaran, inadvertently this miscellaneous application has been filed by the petitioner instead of First Appeal under Section 299 of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act').

3. Accordingly, he prays that in the interest of justice



the petitioner may be permitted to convert this miscellaneous application into the First Appeal under Section 299 of the Act.

4. Learned counsel for the respondents has no objection on this point.

5. Learned counsel for the parties have pointed out that in the order dated 29.11.2021, the operation of the impugned order dated 19.03.2021 was stayed till appearance of the sole respondents. The said stay order was extended vide order dated 21.02.2022. It is submitted that since the sole respondent has already appeared in this case, the said conditional stay become inoperative. In view of the facts and circumstances and considering the submission of learned counsel for the parties the earlier stay granted in this case be treated as vacated.

6. In view of the submission of learned counsel for the petitioner, four weeks time is granted to convert this Civil Miscellaneous Application into First Appeal under Section 299 of the Act.

7. It is needless to say that the petitioner has liberty to move before the appropriate Bench by filing petition for stay of proceeding and the same shall be considered on merit in accordance with law.



8. If the question of limitation arises in proposed first appeal, then the petitioner may move the limitation petition for consideration that the petitioner inadvertently filed this Civil Miscellaneous application and liberty has been given to convert this Miscellaneous Application into First Appeal.

(Sunil Dutta Mishra, J)

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