

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1156 of 2019

1. Sabita Bhaduri Widow Late Asit Shankar Bhaduri Resident 31/A, Alipur Road, Ground Floor, Kolkatta-27.
2. Nirjhar Shankar Bhaduri S/o Asit Shankar Bhaduri Resident 31/A, Alipur Road, Ground Floor, Kolkatta-27.
3. Nilayana Bhattacharji D/o Asit Shankar Bhaduri Resident 31/A, Alipur Road, Ground Floor, Kolkatta-27.

... .. Petitioner/s

Versus

1. Amar Singh S/o Late Parth Brahmchari Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
2. Kumar Singh S/o Late Parth Brahmchari Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
3. Samar Singh S/o Late Parth Brahmchari Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
4. Smt. Shipra Singh W/o Late Udai Singh Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
5. Aditi Rashmi D/o Late Udai Singh Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
6. Preyashshi Singh D/o Udai Singh Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
7. Aradhana Singh D/o Udai Singh Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
8. Seoji Singh S/o Late Parth Brahmchari Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
9. Smt. Laxi Das D/o Late Parth Brahmchari Resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
10. Sumla Bhaduri W/o Late L.T.C. Amal Shankar Bhaduri Resident of 36 A, Dr. Sudhir Bose,Road Khidirpur,Kolkata-23 at present resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
11. Indranil Bhaduri S/o Late L.T.C. Amal Shakar Bhaduri Resident of 36 A, Dr. Sudhir Bose,Road Khidirpur,Kolkata-23 at present resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
12. Shrimati Oinindrila Mukherjee D/o D/o Late L.T.C. Amal Shankar Bhaduri and W/o Sumitro Mukherjee Resident of 36 A, Dr. Sudhir Bose,Road Khidirpur,Kolkata-23 at present resident of Mohalla Mirchaibari, Katihar Police Station and District Katihar
13. Taniya Shankar Bhaduri D/o Late Ashish Shankar Bhaduri Resident of 58 D Alipur Road,Kilkata-27
14. Tupa Shankar Bhaduri D/o Late Ashish Shankar Bhaduri Resident of 58 D Alipur Road,Kilkata-27
15. Tora Sbhankar Bhauri D/o Late Ashish Shankar Resident of 58 D Alipur

Road,Kilkata-27

16. Anish Shankar Bhaduri S/o Late Jyotsna Shankar Bhaduri Resident of 58 D Alipur Road,Kilkata-27
17. Abhijeet Shankar Bhaduri S/o Late Jyotsna Shankzar Bhaduri Resident of 58 D Alipur Road,Kilkata-27

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Choubey, Sr. Adv. Mr. Ashok Kumar Garg, Adv. Mrs. Ritu Priyadarshini, Adv. Mr. Mohit Kumar, Adv.
For the Respondent/s	:	Mr. Alok Anand, Adv. Mr. Rakesh Kumar Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 20-02-2025

At the outset, learned senior counsel appearing on behalf of the petitioner submits that order dated 18.01.2024 passed by this Court has been complied so far as withdrawing one of the grounds taken in the title appeal with regard to non-consideration of application filed under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure (in short “the Code”).

2. Heard learned senior counsel for the petitioners as well as learned counsel for the respondents.

3. Petitioners are aggrieved by the order dated 27.03.2019 passed by learned Sub Judge-VII, Katihar in Title Suit No. 223 of 2008 whereby and whereunder the learned Sub Judge while allowing the application dated 03.11.2018 filed on behalf of defendant 1st set under Order 7 Rule 11(d) of the Code

rejected the plaint and did not accede to the prayer of the plaintiff that the plaintiff be allowed to convert the title suit into miscellaneous case for challenging the compromise decree.

4. Learned senior counsel submits that Title Suit No. 223 of 2008 has been filed for setting aside the compromise decree passed in Title Suit No. 15 of 1993. The defendant challenged the filing of the plaint on the ground that for setting aside the compromise decree under Order 23 Rule 3(A) of the Code, a fresh suit cannot be instituted and only miscellaneous case was maintainable before the same court which passed the compromise decree. Learned senior counsel further submits that, however, the learned trial court did not appreciate the fact that the plaintiff was already before the court for more than ten years and the suit has been filed on wrong legal advice and for this the litigant should not be penalized. Further, the learned trial court has not given any reason as to why it was not allowing the conversion of the suit into miscellaneous case. Further, learned senior counsel for the petitioners relies upon the decision of learned Single Judge of the this Court in the case of ***Sushma Devi and Ors. Vs. Jamunai Devi @ Punam & Ors.*** passed in ***Civil Revision No. 94 of 2013*** wherein allowing conversion of the suit into miscellaneous case was approved. Thus, learned

senior counsel submits that the impugned order is not sustainable and the same needs to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent nos. 3 and 8 vehemently contends that there is no infirmity in the impugned order and the same does not need any interference. Learned counsel further submits once the plaint has been rejected, the foundation of the matter goes and since the rejection has already been challenged by filing an appeal, the present civil miscellaneous petition is not maintainable. Learned counsel further submits that if challenge to a decree based on compromise is on the ground of fraud, the challenge could be made by way of filing a miscellaneous case under Order 23 Rule 3(A) of the Code and not by instituting a suit. Learned counsel further submits that the learned trial court rightly passed the orders rejecting the plaint and the plaintiff has already approached the appellate court against such rejection. Moreover, the suit has been filed in the year 2008 and after 10 years, when the defendants challenged the maintainability of the suit, this prayer was made in rejoinder. Thus, learned counsel reiterates that there is no infirmity in the impugned order and the same is proper and valid and does not need any interference.

6. I have given my thoughtful consideration to the

rival submission of the parties. Admittedly, the plaint was filed for setting aside the compromise decree before the learned trial court and against such prayer, only miscellaneous case under Order 23 Rule 3(A) of the Code would lie. Normally, the courts are quite liberal in allowing conversion of one type of case to the other in order to save time and difficulty to the litigants and the same could have been done in the present case as well. However, the learned trial court has already rejected the plaint and an appeal has been preferred against such rejection, in these circumstances preferring a civil miscellaneous petition under Article 227 challenging the order of the learned trial court not according the prayer of the plaintiff for conversion of the title suit into miscellaneous case could not be permitted. For the reasons mentioned hereinafter, there remains no suit after rejection of the plaint as the plaint has already been rejected. Even if this Court allows the miscellaneous petition, there is no suit which could be converted into miscellaneous petition. It is pertinent to point here that this Court under the supervisory jurisdiction under Article 227 would not go into the merits of rejection of the plaint and once the plaint has been rejected and appeal has been preferred, the appellant is at liberty to raise all issues before the appellate court. It is stressed that once appeal

has been preferred against the impugned order and the same is pending, opting for different forums to agitate various grievances ought not to be allowed. Every issue which arose during rejection of the plaint could be raised by the appellant before the appellate court and raising these issues before two different forums could result in anomalous situation. If appeal is dismissed, the suit would go and there would be no substratum for conversion of the matter into miscellaneous case even if the present petition is allowed. Moreover, allowing or not allowing the conversion is entirely the discretion of the Court and as a matter of convenience and there could not be any strait-jacket formula. In the circumstances, this Court would be most reluctant to interfere with such order in its supervisory jurisdiction under Article 227 of the Constitution. Hon'ble Supreme Court in the Case of *Jai Singh & Ors. Vs. M.C.D. & Anr.* reported in *(2010) 9 SCC 385* observed that the High Courts cannot act like "bull in China shop" and the exercise of jurisdiction must be within the well recognized constraints.

7. Furthermore, challenge to the compromise decree can only be before the same court which passed the decree and not before any Court. Once the challenge to the suit has been made under Order 7 Rule 11(d) of the Code the plaintiffs ought

to have taken steps for conversion or institution of miscellaneous case on the first instance and could not have waited for the learned trial court to reject the plaint as the same was barred by specific provisions of law. The reliance place by the learned Single Judge in the case of ***Sushma Devi*** (Supra) is not relevant as in ***Sushma Devi*** (supra)'s case, the order directing conversion was directly not under challenge but what has been challenged before this Court was that the learned trial court after converting the suit into miscellaneous case went on to dispose of the said miscellaneous case though it was not the Court before whom the compromise was entered into by the parties. If the suit was still alive, the conversion into miscellaneous case could have been considered and facts being different, the approval of conversion by this Court in ***Sushma Devi*** (Supra) would not be applicable in the present set of facts. So far as contention of the learned senior counsel for the petitioners about learned trial court not recording any reasons for not considering the issue of conversion is concerned, the learned trial court has recorded its reasons for rejection of the plaint as it was primarily concerned with the petition filed by the defendants under Order 7 Rule 11(d) of the Code and once it found itself in agreement with the contention of the defendants,

and rejected the plaint of the plaintiffs, there was no occasion for it to pass further orders on prayer made by the plaintiff in their rejoinder.

8. In the light of discussion made hereinabove, I do not find any error of jurisdiction in passing the impugned order by the learned trial court so far as non-consideration of prayer of the plaintiff/petitioners for conversion of their title suit into miscellaneous case is concerned. As a result the impugned order dated 27.03.2019 is affirmed and hence, the present petition stands dismissed.

9. However, it is made clear that as the plaintiffs are already before the appellate court, they are at liberty to raise all issues before it and could even take the ground which they have withdrawn.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
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