

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.977 of 2023**

1. Dilip Kumar Chaudhary,
2. Manoj Kumar Choudhary,
Both Sons of Late Krishnadeo Prasad Choudhary, Resident of Mohalla
Jamalpur, Rampur Road, P.S. Gogri, District - Khagaria.

... .. Petitioner/s

Versus

1. Anil Kumar Chaudhary,
2. Sunil Kumar Choudhary,
Both Sons of Late Krishnadeo Choudhary, Resident of Mohalla Jamalpur,
Rampur Road, P.S. Gogri, District - Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhirendra Singh, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 04-04-2025

Heard learned counsel for the petitioners and I intend
to dispose of the instant petition at the stage of admission itself.

2. The petitioners are aggrieved by the order dated
29.03.2023 passed by the learned Sub Judge, Gogari, Khagaria
in Title Partition Suit No. 63 of 2021 whereby and whereunder
the learned Sub Judge allowed the petition dated 22.11.2021
filed by the defendants/respondents under Order 23 Rule 1 A of
the Code of Civil Procedure (hereinafter referred to as 'the
Code').



3. Admittedly, the petitioners and the respondents were all defendants before the learned trial court. The mother of the parties had been prosecuting the case. After her death, the respondents prayed for transposition under Order 23 Rule 1A of the Code, which was allowed vide order dated 29.03.2023. Main grievance of the petitioners is that partition had already taken place in the family and for this reason allowing transposition was wrong. I think it is absurd proposition. Whether partition had taken place or not, it is for the learned trial court to decide and for deciding the issue of transposition, the same is immaterial. Another ground to assail the order of the learned trial court is allowing the application of the respondents after death of the sole plaintiff.

4. So far as transposition is concerned, Order 23 Rule 1A of the Code provides that where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants. At the same time, Order 22 Rule 1 of the Code provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right



to sue survives and Order 22 Rule 3 of the Code further provides that the court shall cause the legal representative of the deceased plaintiff to be made a party on an application in this regard.

5. Conjoint reading of these provisions makes it clear that the respondents could have been substituted in place of the sole plaintiff after her death. Even though the application has been filed mentioning the wrong provision as Order 23 Rule 1A of the Code does not apply in the scenario of a plaintiff's death, yet the endeavour of the courts should be towards securing the ends of justice. I do not find the impugned order suffers from any infirmity as the same has been passed after due consideration of facts and law and, therefore, the same is affirmed.

6. Finding no merit, the instant petition is dismissed.

7. But before parting with the order, this Court would like to point out that the learned counsel for the petitioners, in utterly casual and careless manner, has filed a typed copy of certified copy of the impugned order claiming it to be true typed copy when the version of typed copy appears to be completely out of sync with its original. Hence, learned counsel is warned to remain careful in future otherwise appropriate orders may be



passed against him.

V.K.Pandey/-

(Arun Kumar Jha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2025
Transmission Date	NA

