

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.247 of 2021**

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1. Matang Singh son of Late Saryug Singh resident of 7C, Doctor s Lane, Gole Market, District- New Delhi- 1100001
2. Pramod Kumar Singh son of Late Saryug Singh resident of Hospital Road, LaheriaSarai, P.S. Laheriasarai, P.O.- Darbhanga Medical College and Hospital, District- Darbhanga.
3. Lallan Prasad Singh @ Lalan Prasad Singh son of Late Sudama Prasad Singh resident of Hospital Road, LaheriaSarai, P.S. Laheriasarai, P.O.- Darbhanga Medical College and Hospital, District- Darbhanga.
4. Dr Ritesh Kamal son of Late Dr Kamla Prasad Singh resident of Hospital Road, LaheriaSarai, P.S. Laheriasarai, P.O.- Darbhanga Medical College and Hospital, District- Darbhanga.

... .. Petitioner/s

Versus

1. Dr Nitesh Kamal son of Late Dr Kamla Prasad Singh resident of Hospital Road, LaheriaSarai, P.S. Laheriasarai, P.O.- Darbhanga Medical College and Hospital, District- Darbhanga.
2. Om Seva Trust through its Chairman, Branch Office Hospital Road, LaheriaSarai, P.S. Laheriasarai, P.O.- Darbhanga Medical College and Hospital, District- Darbhanga.

... .. Respondent/s

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with

**CIVIL MISCELLANEOUS JURISDICTION No. 478 of 2024**

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1. Om Seva Trust, Through Dr. Nitesh Kamal S/o Late Dr. Kamla Prasad Singh, Branch Office, Hospital Road, Laheriasarai, Darbhanga.
2. Dr. Nitesh Kamal, S/o- Late Dr. Kamla Prasad Singh, R/o - Mohalla- Hospital Road, P.S.- Laheriasarai, P.O.- DMCH, District- Darbhanga.

... .. Petitioner/s

Versus

1. Pramod Kumar Singh, S/o- Late Saryug Singh, R/o - Mohalla- Hospital Road, P.S.- Laheriasarai, P.O.- DMCH, District- Darbhanga
2. Lalan Prasad Singh, S/o- Late Sudama Prasad Singh, R/o - Mohalla- Hospital Road, P.S.- Laheriasarai, P.O.- DMCH, District- Darbhanga.
3. Dr. Ritesh Kumar, S/o- Late Kamla Prasad Singh, R/o - Mohalla- Hospital Road, P.S.- Laheriasarai, P.O.- DMCH, District- Darbhanga.

... .. Respondent/s

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**Appearance :**

(In CIVIL MISCELLANEOUS JURISDICTION No. 247 of 2021)

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Adv.



For the Respondent/s : Mr.Mayank Singh, Adv.  
Mr.Lokesh Kumar Singh, Adv.  
(In CIVIL MISCELLANEOUS JURISDICTION No. 478 of 2024)  
For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.  
Mr. Kumar Gaurav, Adv.  
Mr. Shashank Kashyap, Adv.  
Ms. Sheshadri Kumari, Adv.  
For the Respondent/s : Mr. Madan Mohan, Adv.

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**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH**  
**CAV JUDGMENT**

**Date : 16-07-2026**

**RE: Civil Miscellaneous Jurisdiction No. 247 of 2021**

Heard learned counsel for both the parties.

2. The instant application has been filed on behalf of the petitioner against the order dated 04.03.2021 passed by learned Sub-Judge 1<sup>st</sup> Darbhanga in Title Suit No. 234 of 2019, whereby the defendant no. 4/respondent 1<sup>st</sup> set has been transposed in the array of plaintiff as co-plaintiff.

3. Learned counsel for the petitioner submits that one “Om Seva Trust” through the alleged chairman Gauri Singh and she herself, in the capacity of plaintiff nos. 1 and 2 respectively, filed Title Suit No. 234 of 2019 with the following reliefs:-

A. On adjudication of facts stated above it be declared that plaintiff is chairman of the Board of trustee of the “Om Seva Trust” and the defendant 1st party has no manner of concern to interfere in the business of said Trust.



B. A decree for cost and other relief or reliefs for which the plaintiffs be deem fit be granted in favour of plaintiff and against the defendants.

4. Learned counsel for the petitioner submits that, upon receipt of summons, defendant nos. 1, 2, 3, and 5 appeared and filed a joint written statement denying the allegations made in the plaint as well as questioning the maintainability of the suit. It was specifically contended that the Court lacked territorial jurisdiction to entertain the suit, as the trust deed had been registered at New Delhi and the subsequent amendment thereto had also been effected at New Delhi.

5. Learned counsel further submits that the aforesaid Trust was constituted through the joint efforts of Late Dr. Kamla Prasad Singh and other trustees for the avowed objects and purposes set out in the Trust Deed. It is contended that the Dental College & Hospital and Mata R Dental Hospital were established by Om Seva Trust with the active participation and contribution of defendant no. 1, Matang Singh.

6. It was further submitted that the allegation regarding the resignation of Matang Singh (defendant no. 1) is wholly incorrect and finds no mention in the Amendment Deed registered on 25.06.2018. According to the defendants, Matang Singh never



ceased to be a trustee of the Trust. After the demise of Dr. Kamla Prasad Singh on 25.12.2016, Dr. Nitesh Kamal was inducted as an additional trustee in a meeting held on 22.06.2018. In the same meeting, Dr. Nitesh Kamal was appointed as the Secretary of the Trust, plaintiff no. 2, Gauri Singh, was entrusted with the responsibility of Treasurer, and Matang Singh (defendant no. 1) was elected as the Chairman of the Trust.

7. It is further stated by learned counsel for the petitioner that with the concurrence of all the trustees, including plaintiff no. 2, Gauri Singh, and Dr. Nitesh Kamal, the Trust Deed was amended and duly registered with the Registrar at New Delhi on 26.06.2018. The allegation of plaintiff no. 2, Gauri Singh, that her signatures were obtained on blank papers and stamp papers and that her photographs were procured for ulterior purposes, has been categorically denied as false, baseless, and scandalous.

8. Learned counsel for the petitioner-defendants further contend that plaintiff no. 2, Gauri Singh, and defendant no. 4 were found to have indulged in financial irregularities, including siphoning of Trust funds and misappropriation of Trust properties, which were detrimental to the interests of the Trust. Consequently, they were removed by a majority decision of the trustees. It is further stated that Dr. Nitesh Kamal was removed from the



trusteeship on 11.02.2019, pursuant to which a supplementary/amendment Trust Deed was executed and registered at New Delhi. Similarly, Gauri Singh was also removed from the trusteeship by a majority vote on 24.05.2019 in accordance with the procedure prescribed under the Trust Deed.

9. Learned counsel for the petitioner submits that, after the institution of the suit, original plaintiff no. 2, Gauri Singh, passed away on 14.10.2019. Thereafter, the defendants filed a petition contending that, in view of the death of Gauri Singh, the right to sue did not survive and the suit had consequently become non-maintainable. It is further submitted that Dr. Nitesh Kamal, who was originally impleaded as defendant no. 4 in the suit, subsequently filed an application under Order XXIII Rule 1A read with Order I Rule 10 of the Code of Civil Procedure seeking his transposition as plaintiff no. 2. The said application was opposed by the other defendants, who filed their objections and rejoinder thereto.

10. After hearing the parties on the aforesaid application, the learned Trial Court allowed the prayer for transposition and directed that Dr. Nitesh Kamal be transposed as plaintiff no. 2. Aggrieved by the said order, the present Civil Miscellaneous



Petition has been preferred by the remaining defendants challenging the legality and propriety thereof.

11. During the course of arguments, learned counsel for the petitioner submits that the impugned order transposing defendant no. 4 as a co-plaintiff is not in conformity with the provisions of Order XXIII Rule 1A of the Code of Civil Procedure. It is contended that the cause of action underlying the suit did not survive after the death of original plaintiff no. 2, and therefore the suit itself was liable to fail. Learned counsel further submits that the provisions of Order XXIII Rule 1A CPC are attracted only in cases where a suit is withdrawn or abandoned by the plaintiff and have no application to the facts of the present case. It is also argued that defendant no. 4 had not filed any written statement in the suit and, therefore, he had not asserted any independent or substantial right requiring adjudication by the Court. Consequently, he could not claim any right to be transposed as a plaintiff.

12. It is further submitted that the original plaintiff no. 2 had herself specifically averred in the plaint that the defendants of the second party were acting in collusion with the defendants of the first party, and defendant no. 4 had been arrayed as one of the defendants of the second party. In such circumstances, permitting



defendant no. 4 to be transposed as a co-plaintiff would be contrary to the pleadings of the original plaintiff. Learned counsel also contends that defendant no. 4 had already been removed from the trusteeship of the Trust in question on 02.12.2019, even prior to the institution of the suit, and therefore he had no subsisting interest in the affairs of the Trust. It is thus argued that the learned Trial Court acted illegally and with material irregularity in allowing the transposition of defendant no. 4 (a defendant of the second party) as a co-plaintiff in the suit.

13. Per contra, learned counsel appearing on behalf of the respondent submits that the impugned order is just, proper, and in accordance with law. It is contended that the learned Trial Court, after considering the facts and circumstances of the case as well as the relevant provisions of law, rightly allowed the application for transposition of defendant no. 4 as a co-plaintiff. Learned counsel further submits that the order does not suffer from any illegality, jurisdictional error, or material irregularity warranting interference by this Court in exercise of its supervisory jurisdiction. Accordingly, it is urged that the present Civil Miscellaneous Petition is devoid of merit and liable to be dismissed.



14. First of all it is essential to go through the provision of Order XXIII Rule 1A which reads as under:-

*“1A. When transposition of defendants as plaintiffs may be permitted. – 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.”*

15. After going through the above provision, it is clear that this provision is applicable only when the suit is either withdrawn or abandoned by the plaintiff or secondly during consideration of application of this provision it is essential to have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

16. This is the litmus test for any decision with respect to any application of Order XXIII Rule 1A of CPC. On the envil or aforesaid principle when I examine this case, it appears that original plaintiff Gauri Singh had prayed relief in the aforesaid Title Suit No. 234 of 2019 that she (plaintiff no. 2) be declared as Chairman of Board of trustee of the Om Seva Trust and the defendant first party (Matang Singh) has no manner of concern to



interfere in the business of said Trust. First relief is with regard to declaration of her Chairmanship and second relief is with regard to declaration of the fact that Matang Singh had no manner of concern to interfere with the business of the Trust. The said Gauri Singh plaintiff no. 2 has already died on 14.10.2019 and defendant Matang Singh has also died on 06.05.2021.

17. In this view of matter, at present, the above two reliefs which are only declaratory in nature with respect to the status of original plaintiff no. 2 and defendant no. 1 regarding “Om Seva Trust” are not existing/surviving for adjudication of the suit, after the death of Gauri Singh (plaintiff no. 2) and Matang Singh (defendant no. 1). So there is nothing to be adjudicated by the Court in Title Suit No. 234 of 2019.

18. Learned counsel for both the parties relied on the judgment passed by Hon’ble Supreme Court in the case of ***R. Dhanasundari alias R. Rajeshwari Vs. A.N. Umakanth and Ors.*** Reported in ***(2020) 14 SCC 1***. Para 11, 12 and 13 of the aforesaid judgment reads as under:-

*“11. As per Rule 1-A ibid., in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a pro forma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against*



*the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A ibid. leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A ibid. would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order 23 and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff. thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.*

*12. The present one is clearly a case answering to all the basics for applicability of Rule 1-A of Order 23 read with Order 1 Rule 10 CPC. As b noticed, the principal cause in the suit is challenge to the sale deed executed by Defendant 1 in favour of Defendant 2, with the original plaintiff asserting his ownership over the property in question. After the demise of original plaintiff. his sons and daughters came to be joined as Plaintiffs 2 to 8 with Plaintiff 5 being the power-of-attorney holder of all the plaintiffs. After the suit was decreed ex parte, Plaintiff 5 transferred the property in question to the*



*aforesaid three purchasers, who were joined as Plaintiffs 9 to 11 when the ex parte decree was set aside and suit was restored for bi parte hearing. In the given status of parties, even if Plaintiffs 5 and 9 to 11 were later on transposed as Defendants 3 to 6. the suit remained essentially against Defendants 1 and 2, that is, in challenge to the sale deed dated 23-3-1985, as executed by Defendant 1 in favour of Defendant 2. In regard to this cause, even if Plaintiffs 5 and 9 to 11 came to be transposed as Defendants 3 to 6. their claim against Defendants 1 and 2 did not come to an end; rather, the interest of the existing plaintiffs as also Defendants 3 to 6 had been one and the same as against Defendants 1 and 2.*

*13. In the given status of parties and the subject-matter of the suit, when the plaintiffs entered into an arrangement with Defendants 1 and 2 and sought permission to withdraw under Order 23 Rule 1 CPC, the right of Defendants 3 e to 6 to continue with the litigation on their claim against Defendants 1 and 2 immediately sprang up and they were, obviously, entitled to seek transposition as plaintiffs under Order 23 Rule 1-A CPC”*

19. In view of the aforesaid principle laid down by the Hon’ble Apex Court, upon examining the facts and circumstances of the present case, it appears that transposition can be permitted only when it is necessary for the effective, complete, and comprehensive adjudication of all matters in controversy involved



in the suit. In the present suit, there is no issue requiring adjudication between Defendant No. 4 and the other defendants. Therefore, the order impugned herein cannot sustain in the eye of law and is accordingly set aside. Consequently, the instant Civil Miscellaneous Jurisdiction No. 247 of 2021 stands allowed.

**RE: Civil Miscellaneous Jurisdiction No. 478 of 2024**

The instant application has been filed for setting aside the order dated 06.04.2024 passed by learned Sub-Judge I, Darbhanga in Title Suit No. 234 of 2019 whereby and whereunder he has rejected the amendment petition dated 27.09.2022, filed on behalf of plaintiff-petitioner under Order VI Rule 17 of CPC.

2. After transposition of Dr. Nitesh Kamal as a co-plaintiff vide order dated 04.03.2021, he filed an application seeking amendment of the plaint by incorporating and modifying certain facts. However, while allowing the application for transposition, the learned Trial Court had specifically observed that the petition filed by defendant no. 4, Dr. Nitesh Kamal, was being allowed on the condition that he would adopt the plaint as originally filed by deceased plaintiff no. 2, Gauri Singh. The learned Trial Court had further made it clear that, upon such transposition, Dr. Nitesh Kamal would not be permitted to seek unnecessary amendments in the plaint, and that any request for



amendment would be governed by the provisions of Order VI Rule 17 of the Code of Civil Procedure. Despite the aforesaid condition stipulated with the order of transposition, Dr. Nitesh Kamal subsequently filed the amendment petition seeking to alter and introduce certain pleadings in the plaint and that has been rejected by the Trial Court vide order dated 06.04.2024 which is under challenge before this Court.

3. Learned Trial Court at the time of deciding the matter has held as under:-

*“Now through this amendment petition the petitioner wants the relief that the defendants number 2, 3 and 5 be restrained to do any act against the objective of original trust deed dated 05.05.1988. This amendment will completely change the nature of the suit as the original suit was for declaration of Shrimati Gauri Singh as chairman of Om Seva trust and by the amendment the suit will change to suit for injunction, which can not be allowed. Therefore, the petition of the plaintiff dated 27.09.2022 is rejected.”*

4. It is pertinent to note here that the order dated 04.03.2021, whereby the petitioner was transposed as a co-plaintiff, has been set aside by this Court in C. Misc. No. 247 of 2021 by a judgment/order delivered today. Consequently, the very basis of the present application no longer survives.



5. In view of the aforesaid development, the instant application has become infructuous and is accordingly dismissed.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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