

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P No. 418 of 2023**

Sanjeev Bhagat aged about 47 years S/o Late Prabhakar Gandhi
Bhagat, resident of Khijuria Toli Sarhul Nagar Bariatu, P.O. & P.S.
Bariatu, District-Ranchi. Petitioner

Versus

1. Tej Lal Bhagat
2. Dhanesh Kumar Bhagat
Both sons of Late Prabhakar Gandhi Bhagat, resident of Khijuria Toli
Sarhul Nagar Bariatu, P.O. & P.S. Bariatu, District- Ranchi
.... .. Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Arun Kumar, Advocate
For the Opp. Parties No. 1 and 2 : Mr. Shailendra Kr. Singh
: Mr. Prasanjeet Kr. Singh

10/30th September, 2024

1. The instant Civil Miscellaneous Petition has been filed on behalf of the petitioner against the order dated 28.02.2023 passed by the learned Civil Judge (Senior Division)-XI, Ranchi in Original Suit No. 595 of 2015, whereby a petition filed by the petitioner for recalling the order dated 06.06.2019 has been rejected.
2. Learned counsel for the petitioner has submitted that the petitioner/ plaintiff has filed the suit for partition against three co-sharers and he has also impleaded the Deputy Commissioner, Ranchi as defendant in the said suit. During pendency of this suit for partition, the defendant No.1, mother of plaintiff and the defendant nos.2 and 3 had died and no substitution was sought for the same, since all the legal heirs were already on record
3. Subsequently, on behalf of the defendant nos.2 and 3 i.e., Tej Lal Bhagat and Dharmesh Kumar Bhagat respectively, the application under Order I Rule 10 of Code of Civil Procedure (in short 'CPC') was moved before the Trial Court to transpose themselves as plaintiffs in the very Original Suit (P.S.) No. 595 of 2015. Learned trial court allowed the said application vide order dated 06.06.2019. The order dated 06.06.2019 was assailed by the plaintiff moving application on the ground that transposition cannot be made in the suit. The

learned Trial Court rejected the application of the petitioner vide order dated 28.02.2023. Hence, aggrieved with the orders dated 06.06.2019 and 28.02.2023, the petitioner has come before this Court by way of filing the present Civil Miscellaneous Petition under Article 227 of the Constitution of India.

4. Per contra, learned counsel for the opposite parties contended that the transposition made by the learned Trial Court does not bear any infirmity as the defendants were also willing to get their possession separate in the property in question which was of joint ownership and joint possession. As such, the impugned order bears no illegality.
5. Heard the learned counsel for the parties and perused the materials available on record.
6. The copy of the plaint is made Annexure 1 of this petition and on perusal of the same, it is found that Sanjeev Kumar Bhagat has filed the suit for partition impleading the co-sharers and the Deputy Commissioner, Ranchi as defendants in the suit. So far as the transposition of the defendant nos. 2 and 3 as plaintiff in the suit is concerned, the same is not found to be based on the provision of Order XXIII Rule 1A of the CPC which reads as under :

1-A. 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."

7. Taking into consideration the very provisions of Order XXIII Rule 1A of the CPC, it is evident that defendants may transpose as plaintiff in a suit only in the circumstances; firstly when the plaintiff has withdrawn the suit or abandoned the suit and secondly when the defendant has substantial question of law to be decided against any other defendant.
8. The Hon'ble Apex Court in the case of ***R. Dhanasundari @ Rajeshwari vs. A.N. Umakanth & Ors.*** reported in ***(2020) 14 SCC 1*** has explained the scope and object of Order XXIII Rule 1A of CPC that the specific requirement for its applicability is that the

defendants seeking transposition must have a substantial question to be adjudicated against other defendants.

9. In the case in hand, the plaintiff who has filed the suit for partition has neither withdrawn the suit nor has abandoned the same. The defendant(s) has not shown in his application any substantial question of law to be adjudicated against another defendants. In the suit in question both the defendants have sought transposition as plaintiff and no other defendant is left in the suit except the Deputy Commissioner, Ranchi who is a formal party in the suit. The learned Trial Court without recording any reasons allowed the application for transposition which is not found in view of the spirit of Order XXIII Rule 1A of C.P.C, reason being, the plaintiff, who has filed the suit for partition declaring his share in the property of joint ownership and possession and also the separate possession on his share of 1/3rd which he has claimed.
10. If the defendants were also willing to get their possession separate on their 1/3rd share respectively and separately, for the same, the defendants may seek the amendment in their written statement for claiming their separate possession in their declared share by paying the required Court fees for the relief sought in the written statement itself. The ground of transposition being not found in the case in hand as such, the impugned order dated 28.02.2023 passed by the learned Trial Court by which the learned trial court has vetted the order dated 06.06.2019 needs interference and this petition deserves to be allowed.
11. Accordingly, this civil miscellaneous petition is, hereby, allowed and the impugned order dated 28.02.2023 passed by the learned trial court is, hereby, set aside.

(Subhash Chand, J.)

Rashmi/AFR