
(2025) 10 JH CK 0041

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 1166 Of 2023

Bimla Devi

APPELLANT

Vs

Tarani Mahto

RESPONDENT

Date of Decision: Oct. 14, 2025

Acts Referred:

- Constitution of India, 1950 — Article 227
- Code of Civil Procedure, 1908 — Section 151

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Kanishka Deo, Niranjana Kumar, Sudhansu Kumar Deo, Lalit Yadav

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner was the defendant no. 22 in Title (Partition) Suit No. 49 of 2009 and the instant civil miscellaneous petition has been filed for setting aside the order dated 03.05.2023 by which her petition for transposition as plaintiff was rejected and on the very next date i.e. on 04.05.2023, the suit was dismissed for default for non-appearance of the plaintiff.

2. On perusal of the impugned order dated 03.05.2023, it appears that the petition for transposition dated 01.04.2023 was rejected on the ground that the affidavit in support of the petition was sworn by one Sushil Prasad Yadav who was neither party to the suit nor was having any power of attorney on behalf of the petitioner.

3. The suit was dismissed for default vide order dated 04.05.2023 at the stage of argument, as no step was being taken for last six dates from 21.03.2023 on behalf of the plaintiff.

4. It is argued by the learned counsel on behalf of the petitioner/ defendant no. 22 that the plaintiff had colluded with the other defendants and, therefore, the petitioner had filed earlier transposition petition on 22.11.2018 duly signed by her. However, no order was passed on the said petition and

consequently, the petition dated 01.04.2023 was filed which has been rejected and on the very next date, the suit was dismissed for default.

5. It is also argued that in a partition suit both, the plaintiff and defendants, have a right to get their shares carved out from the joint family property. Further, it is also argued that in a partition suit both the plaintiff and defendants have a right to get their share carved out and if the plaintiff is deliberately abandoning the suit, defendants have a right to be transposed. The transposition has been rejected on the technical ground despite the fact that a formal transposition petition had earlier been filed duly signed by this petitioner.

6. It is submitted by Mr. Sudhansu Kumar Deo, learned counsel appearing on behalf of the opposite party no. 9/ defendant, that the petitioner has no right over the suit property and she can assert her right over the schedule property by filing a fresh suit and the parties have examined the witnesses against the provision of law which cannot be read into evidence. It is submitted that during the pendency of the civil miscellaneous petition, some of the opposite parties have died as per the service report.

7. It is submitted by Mr. Niranjana Kumar, learned counsel appearing on behalf of opposite party nos.1,3,4,5,10-12,14,15, and 22 that the transposition petition, which was pressed into motion on 01.04.2023, was not in proper form and, therefore, it has been rightly rejected. Further, there is no document of compromise to establish that the plaintiff had colluded with the defendants in not pursuing the said partition suit.

8. Having considered the submissions on behalf of the both sides, the argument advanced on behalf of the opposite parties regarding the merit of the claim of this petitioner is not sustainable for the reason that only at this stage. It cannot be said whether the petitioner had a right in the joint family property or not. The trial was at its penultimate stage for argument and the adjudication about the rights could have been decided by judgment and not by dismissing the suit for default. It has been asserted by the petitioner that earlier a transposition petition had been filed on 22.11.2018, duly signed by the petitioner.

9. What drove, the Trial Court to dismiss the transposition petition dated 01.04.2023 without giving an opportunity to file a proper affidavit, if there was any defect in the said transposition petition is intriguing and beyond comprehension. The very fact that on 03.05.2023, the petition of transposition is rejected and on the very next date i.e., on 04.05.2023 the suit is dismissed for default lends, credence to the plea of the petitioner that the plaintiff under a design had abandoned the suit and transposition was also rejected without giving proper opportunity to the petitioner to rectify defect, if any, in the affidavit sworn on behalf of the defendant. Further, there was a duly signed transposition petition on record filed by the petitioner in 2018. From Annexure-4, it is apparent that a compromise petition had also been filed between the plaintiff and defendants and therefore, it can be inferred that the suit dismissed for default was collusive in nature, to defeat the right of the Petitioner to be transposed in the partition suit.

10. In view of the fact that the claim of the opposite parties is similar, therefore, it will not serve ends of justice to delay the disposal of the instant civil misc. petition by directing the petitioner to get a proper substitution petition be filed and the matter to be delayed at this stage. Petitioner in any case will be filing a substitution before the trial court after his transposition. In exercise of power under Article 227 of the Constitution of India read with Section 151 of the CPC, requirements of substitution at this stage is dispensed with.

11. Both the orders i.e., order dated 03.05.2023 and 04.05.2023 are not sustainable and are, accordingly, set aside. The suit, which has been dismissed for default, is restored to its original file.

12. The learned Trial Court is directed to pass order afresh after hearing the parties on the petition for transposition.

13. It goes without saying that the petitioner will get the parties substituted before the learned Trial Court before proceeding further.

Civil Miscellaneous Petition is, accordingly, allowed.

Pending I.As., if any, stand disposed of.