

(2025) 05 JH CK 1159
In the Jharkhand High Court
Case No : C.M.P. No. 640 Of 2024

Sunita Devi

APPELLANT

Vs

Dr. Raghubansh Narayan Singh

RESPONDENT

Date of Decision : 07-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 9 Rule 4

Citation : (2025) 05 JH CK 1159

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nagmani Tiwari, Govind Ray Karan, Raj Nandan Chatterjee, Aditee Dongrawat

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Nagmani Tiwari, learned counsel appearing for the petitioner, Mr. Raj Nandan Chatterjee, learned counsel appearing for opposite party nos. 1 and 6 to 9 and Ms. Aditee Dongrawat, learned counsel appearing for opposite party no.4.

2. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 29.02.2024 passed by the learned Civil Judge (Sr. Division)-VI, Daltonganj in Misc. Case No.29 of 2023 arising out of Partition Suit No.17 of 2015, whereby, the learned Court has been pleased to restore the Partition Suit No.17 of 2015 to its original file after imposing cost of Rs.4,000/- to the applicant (opposite party no.1).

3. Mr. Nagmani Tiwari, learned counsel appearing for the petitioner submits that the petitioner has purchased the land of Khewat No.1, Khata No.1, 4, 5, 15, 40 of total area 6.25 acres situated at Mouza- Sotam Dabra, Thana No.361, P.S. Lesliganj, District- Palamau from Tarkeshwar Prasad Singh through registered sale deed no.593/582 dated 13.01.2011, contained in Book 1, Vol. No.18, Page No.159 to 188 of Sub Registrar Office, Palamau. He further submits that

thereafter the petitioner took possession over the land and she applied for mutation before the Circle Officer, Lesliganj and correction slip was issued in her name, contained in Annexure-1 of this petition and, thereafter, she started paying rent. He submits that in the year 2015, vendor of the petitioner and his family filed a partition suit before the Court of the learned Civil Judge (Sr. Division)-I, Palamau, which was registered as Partition Suit No.17 of 2015 and when it came to the knowledge of the petitioner, she filed an intervention petition in the said suit. He further submits that during the course of hearing of the said partition suit, learned Court has been pleased to allow the said intervention petition filed by the present petitioner vide order dated 17.07.2017 treating her to be a necessary party. He submits that the plaintiff of the said partition suit has not complied the order of the learned Court in spite of several opportunity provided to him and the learned Court has been pleased to dismiss the said partition suit vide order dated 24. 04.2023. He also submits that thereafter Civil Misc. Case No.29 of 2023 has been filed by the plaintiff/opposite party no.1 for restoration of the said partition suit and the learned Court vide order dated 29.02.2024 has been pleased to restore the said partition suit without noticing the petitioner. He further submits that even in the restoration petition, the petitioner herein was not made party. He submits that the petition of restoration was not served upon the petitioner herein, who was defendant no.6 in the said partition suit. He submits that in view of that, there is violation of Order IX Rule 4 of the CPC and, as such, the impugned order may kindly be set-aside.

4. Mr. Raj Nandan Chatterjee and Ms. Aditee Dongrawat, learned counsel appearing for the respective opposite parties jointly submit that the learned Court has rightly passed the order and there is no illegality in the impugned order and, as such, this petition may kindly be dismissed.

5. In view of the above facts, it is an admitted fact that the said partition suit was instituted in which the petitioner herein filed an intervention petition, which was allowed by the learned Court vide order dated 17.07.2017 and she was made defendant no.6 in the said suit and subsequently vide order dated 24.04.2023 the said partition suit was dismissed and, thereafter, restoration petition was filed by the plaintiff/opposite party no.1, which has been allowed by the impugned order dated 29.02.2024 by the learned Court. It has not been denied by the learned counsel appearing for the opposite parties that the petitioner was not made party in the said restoration petition. It is not in dispute that the petitioner was not given a copy of the said restoration petition and she was also not noticed in the said restoration petition and without following this procedure, the learned Court has been pleased to restore the said partition suit.

6. The question remains as to whether it is requirement that the notice must be given or not? This aspect of the matter was the subject-matter before different High Courts particularly in the case of R.R. Khatik & others v. Sahadeo Gopala Koshti & others, reported in AIR (32) 1945 Nagpur 185, in which a learned Single Judge of Nagpur High Court has held that if a suit is restored under Order IX,

Rule 4 without notice to the defendant, the same would be bad as defendant must be given notice of the hearing of the suit. Similar view is taken by a Division Bench of the Allahabad High Court in the case of Long Life Carpet Industries v. Smt. Kesar Jahan, reported in AIR 1988 All. 55 when the Division Bench noted that notice must be given to the defendants.

7. In view of the above facts and considering that the petitioner is defendant no.6 in the said partition suit and without issuing notice, the said order of restoration of the partition suit has been passed, which is not in accordance with law and, as such, the order dated 29.02.2024 passed by the learned Civil Judge (Sr. Division)-VI, Daltonganj in Misc. Case No.29 of 2023 arising out of Partition Suit No.17 of 2015 is, hereby, set-aside.

8. The said petition for restoration is restored to the file of the learned Court, who will pass a fresh order after providing opportunity of hearing to all the parties.

9. The petitioner and opposite parties appearing herein in the present C.M.P. shall remain present before the learned Court on 16.06.2025.

10. In view of this order, the learned Court is not required to issue fresh notice upon those parties who are representing the parties in the present C.M.P. before this Court, however, the learned Court will call upon the defendants, who have not appeared before the learned Court and, thereafter, decide the said petition, in accordance with law.

11. Accordingly, this petition is allowed in above terms and disposed of.