

(2025) 11 JH CK 2008

In the Jharkhand High Court

Case No : Civil Miscellaneous Petition No. . 1093 of 2025

Sushmita Bose @ Sushmita Bose Mallik

APPELLANT

Vs

Dr. Samiran Mallik, son of Late Hemendra Chandra Mallik

RESPONDENT

Date of Decision : 26-11-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 23 Rule 1A

Citation : (2025) 11 JH CK 2008

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Piyushita Neha Tudu

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Instant civil miscellaneous petition has been filed under Article 227 of the Constitution of India for quashing the order dated 28.09.2022 passed in Original (Partition) Suit No.214 of 2019 by learned Civil Judge (Senior Division)-V, Dhanbad whereby and whereunder a petition seeking permission to withdraw the suit by the plaintiff has been allowed and consequently, the suit has been dismissed as withdrawn. The petitioner was impleaded in the said suit as defendant and in the instant writ petition seeks transposition under Order XXIII Rule 1A of the CPC in the said partition suit.

2. It is argued by the learned counsel on behalf of the petitioner that the suit was withdrawn even without service of notice or summons on her.

3. Main grievance of the petitioner is that the withdrawal was allowed without hearing the petitioner/defendant and in the said backdrop, a direction has been sought to the trial Court to transpose the petitioner as a plaintiff to permit the suit to be prosecuted on her behalf.

4. On perusal of the impugned order, it appears that the suit was filed impleading the original 27 defendants and subsequently, 04 defendants were further added on the ground that the plaintiff was old and suffering from several ailments and therefore, was not inclined to proceed with the case.

5. This Court is of the view that since the withdrawal of the suit was ordered before appearance of the defendant/petitioner, therefore, right of transposition will not inure in her favour. This is for the reason that Order XXIII Rule 1A of the CPC can be invoked by a party, who has already appeared before the Court and wishes to continue the suit. The defendant, who has not been served notice and had not entered appearance "has not yet become a party before the Court" for the purpose of the Order XXIII Rule 1A of the CPC.

6. Since the party had not appeared when the withdrawal was ordered, no vested right had accrued in her favour for being transposed. Under the circumstance, transposition will not be maintainable in the said suit already withdrawn. However, the petitioner will be at liberty to file a partition suit for the said relief.

Civil Miscellaneous Petition accordingly, stands dismissed. Pending Interlocutory Application, if any, is disposed of.