

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**C.M.P. No. 414 of 2021**

1. Munga Devi, W/o Late Parshuram Prasad, aged about 61 years,
2. Ashok Kumar @ Ashok Prasad, son of Late Parshuram Prasad, aged 46 years
3. Vijay Prasad, Son of Late Parshuram Prasad, Aged 40 years,
4. Binay Kumar, Son of Late Parshuram Prasad, aged 39 years,
5. Binod Kumar, son of Late Parshuram Prasad, aged 34 years,
6. Pramod Kumar, son of Late Parshuram Prasad, aged 35 years,
7. Ranjeet Kumar, son of Late Parshuram Prasad, aged 31 years,
8. Sanjeet Kumar, son of Late Parshuram Prasad, aged 30 years,

All are residents of Chappraya Mohalla, near R.P. Patel High School, Jugsalai, P.O. and P.S. Jugsalai, Town-Jamshedpur, District-East Singhbhum(Jharkhand)

**..... Petitioners/plaintiff**

**Versus**

Kamla Devi, W/o Late Jai Prakash resident of Holding No. 103, Ward No. 13, Chappariya Mohalla, behind R.P. Patel School, Jugsalai, P.O. & P.S. Jugsalai, Town-Jamshedpur

**.....Opposite Party/Defendant**

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For the Petitioners : Mr.Shankar Lal Agarwal, Advocate

For the Opposite Party : Mr. Vikash Kumar, Advocate

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**PRESENT**

**HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

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**JUDGMENT**

**C.A.V. On 18.10.2023**

**Pronounced On: 10.11.2023**

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Present petition under Article 227 of the Constitution of India has been filed for quashing of order dated 12.03.2020 passed in Title Eviction Suit No. 18/2010 by learned Civil Judge (Junior Division) X, Jamshedpur (Annexure 4) whereby and whereunder learned Civil Judge Junior Division, X, Jamshedpur has dismissed the application under Order XXII Rule 3 read with Section 151 CPC filed by the petitioner.

2. Factual matrix giving rise to this petition is that the original plaintiff Parshuram Prasad “husband of petitioner no.1” being owner of the suit land and house situated in the Municipal Holding No. 103

municipal ward no. 4, corresponding to Survey Plot No. 1098, Khata No. 8, Chhapraiya Mohalla, House No. 103 Mouza Jugsalai. P.S., Jugasalain Town Jamshedpur, has filed the aforesaid eviction suit stating interalia that defendant Kamla Devi (Opposite Party) is a sister of the plaintiff. It is alleged that about 10 years back, the defendant and her husband were facing accommodation problem and was in dire need of residential accommodation. Hence, on account of sympathy the plaintiff allowed the defendant to occupy and live in the suit premises with her husband and children. The husband of defendant expired and his sister (defendant) is living in the suit premises along with her children and due to increase in family members of the plaintiff, a request was made to the defendant to vacate the suit premises which she agreed and promised to vacate the suit premises by 31<sup>st</sup> December, 2009. The intention of the defendant became malafide and she on one pretext or other did not vacate the suit premises and ultimately denied to vacate the suit premises, hence, the suit was instituted claiming relief for a decree of recovery of possession of the suit premises vacating the defendant therefrom along with cost of the suit.

3. It appears that during pendency of the suit, original plaintiff Parshuram Prasad died on 14.05.2019 leaving behind his wife and sons as heirs and legal representatives. Consequentially, an application under Order XXII Rule 3 read with Section 151 CPC was filed by the present petitioners before the learned court below for their substitution in place of original plaintiff to contest the suit, which has been dismissed on extraneous considerations and same has been assailed in this petition.
4. Learned counsel for the petitioner has submitted that the impugned order is absolutely illegal and is beyond jurisdiction of the learned court below. The only issue was to substitute the petitioner in place of plaintiff. It is case of none of the party as to what is the nature of the suit premises and status of parties. Admittedly, the defendant was inducted in the suit premises out of sympathy as a licensee. The learned court below has travelled beyond his jurisdiction while recording findings that the original plaintiff was sikmidar and as per provisions of Section 4 & 76 of the Chotanagpur Tenancy Act 1908, under Raiyat

(Sikmidar) does not acquire any occupancy right in the land held by him under the Raiyat, in absence of any custom or usage prevalent in the area in respect thereof; it is neither heritable nor transferable. Therefore, all rights of the plaintiff in respect of suit premises extinguished after his death and applicants cannot be substituted in place of the plaintiff. Hence, petition was dismissed. It is further pointed out that inspite of dismissal of substitution application of the petitioner the suit was kept alive till further one year and ultimately vide order dated 08.12.2021 an order was passed by the learned court below to the effect that the sole plaintiff of this case has died on 14.05.2019. The application filed by wife and sons of deceased for substitution has already been dismissed and no legal heirs has been substituted in this case, hence, there is no reason to continue the suit which is hereby abated. This order was also brought to the notice of this Court through I.A. No. 6092 of 2023. Both the orders are patently illegal and not justified in law and fit to be set aside.

5. Per contra learned counsel for the opposite party has submitted that the application of the plaintiff under Order XXII Rule 3 CPC was decided on merits after providing complete opportunity of hearing. The suit has also been abated hence, appeal lies under Order XLIII Rule 1 of the CPC against the order passed under Order XXII Rule 9 CPC and the petition under Article 227 is not maintainable.
6. I have considered the rival contentions of the parties and perused the materials available on record, the impugned order appears to be not justified in law in view of the fact that an application under Order XXII Rule 3 was filed within time for substitution of legal heirs of the plaintiff. The nature of suit is the recovery of possession. No question of title is involved and it is not a case of either party as to what was the status of plaintiff in respect of the suit premises. Whatever plea taken by the defendant at the time of hearing the application under Order XXII Rule 3 CPC must be confined to inquiry about the heirs and legal representatives of the deceased party. There is no dispute that the petitioners are heirs and legal representatives of the deceased plaintiff.

Therefore, there was no occasion to the learned court below to dismiss the application for substitution of petitioners on extraneous considerations regarding status of applicants as sikmidar. It is also apparent that on the date of dismissal of application under Order XXII Rule 3 no order was passed regarding abatement of the suit and the suit was carried forward without any reason for more than one year and during pendency of this application the order dated 08.12.2021 was passed which has been brought to the notice of this Court through I.A. No. 6092 of 2023.

It is here made clear that an order passed on the application under Order XXII Rule 3 CPC is not appealable under Order XLIII Rule 1 CPC rather it is a revisable order, Hence, there is no substance in the argument of learned counsel for opposite party that there is remedy of appeal before the Civil Court.

In view of above discussion and reasons, I find that impugned order dated 12.03.2020 is not legally sustainable and is hereby set aside.

It is needless to say that in view of setting aside the impugned order dated 12.03.2020, subsequent order passed by learned court below on 08.12.2021 becomes non est and accordingly the same is also set aside. Accordingly, this petition is allowed and the learned court below is directed to permit the petitioners to be substituted in the original Title (Eviction) Suit No. 18/2010 as plaintiffs in place of deceased original plaintiff Parshuram Prasad and proceed further in the case.

7. Accordingly, I.A. No. 6092 of 2023 is also disposed of.

**(Pradeep Kumar Srivastava, J.)**