

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P.(C) No. 4176 of 2012

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Ambika Tiwari & Anr. **Petitioners**
Versus
Gayatri Devi & Others **Respondents**

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO

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For the Petitioners : Mr. Sanjay Kumar Tiwari, Advocate.
For the Respondent Nos.2 to 5 : Mr. Om Prakash Tiwari, Advocate
For the Respondent Nos.7 to 10 : Mr. Anand Kumar Pandey, Advocate.

.....
11/05.05.2022.

Heard, learned counsel for the parties.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has submitted, that the intervenors / purchasers of the part of the suit property are the petitioners before this Court, who have assailed the impugned order dated 28.02.2012 passed by learned (Sub-Judge-II) Civil Judge, Senior Division), Garhwa in Partition Suit No.07/1995, whereby several applications filed in the court below; one by the plaintiff for withdrawal of the suit under Order 23 Rule 1 of the CPC, second by the plaintiff through her husband being a power of attorney-holder to resile from the withdrawal application and; third, the application filed by the husband to stick on withdrawal petition, apart from the application filed by the intervenor(s) under Order 1 Rule 10 of the CPC, and application(s) filed by the legal heirs of the plaintiff under Order 22 Rule 3 of the CPC have been disposed of, by the learned Sub-Judge, Garhwa allowing the withdrawal application and rejecting other interlocutory applications.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that withdrawal application was filed on 20.07.2005, by the original plaintiff under Order 23 Rule 1 of the CPC, relinquishing her claim in favour of the defendants, who are none else than widow and daughters of plaintiff's own uncle.

The intervenors filed an application for impleading them as plaintiff no.2 and 3 in the suit on 28.09.2005.

Madan Pandey, husband of the plaintiff, (Mankali Devi) claiming himself to be a power of attorney holder of the original plaintiff filed application for rejecting the withdrawal petition on 15.12.2005. Subsequently, Madan Pandey- husband of the plaintiff filed an application

for not pressing the objection raised by him on 15.12.2005 vide application dated 20.12.2005.

The sole plaintiff-Mankali Devi died on 27.12.2005 and the legal heirs of the Mankali Devi, who are respondent Nos.7 to 13 in the present writ petition i.e. respondent No.7, Most. Vimla Kunwar, respondent No.8, Asha Devi, respondent No.9, Suman Devi, respondent No.10, Himani Kumari @ Kalpana, respondent No.11, Most Savitri Kunwar, respondent No.12, Rajesh Pandey and respondent No.13, Manoj Pandey @ Munna Pandey jointly filed an application under Order 22 Rule 3 of the CPC for substitution on 16.02.2006, but learned Sub-Judge, Garhwa passed a single order allowing the application filed by the plaintiff on 20.07.2005 for withdrawal of suit under Order 23 Rule 1 CPC after her death on 27.12.2005 by the impugned order, without allowing the substitution petition of the legal heirs (respondent Nos. 7 to 13), who have already filed application on 16.02.2006 and vide impugned order dated 28.02.2012 (after seven years) of the said applications have been disposed of.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that the fact of the case is important material for adjudication. The writ petition has been filed under Article 227 of the Constitution of India.

The Plaintiff, Mankali Devi has filed a Partition Suit against the original defendant, Jugal Kishore Tiwari, who happens to be uncle of Mankali Devi for half of the share of the suit land which comprises of :-

SCHEDULE

Particulars of the suit land situated in villages- Baulia, Goreya, Ranka and Karua Khurd all within police station and district- Garhwa.

<u>Village.</u>	<u>Khata No.</u>	<u>Plot No.</u>	<u>Area. A-D</u>
Baulia	10	5	1.31-0.30 = 1.01
		25	1.83
		40	1.10
		44	1.07
		52	0.27
		76	0.51
		78	0.10
		104	0.05
		110	0.07

148	0.22
172	0.41
215	0.02
245	0.06
280	0.18
288	0.20
313	0.33
320	0.10
332	0.23
334	0.03
344	0.12
354	0.39
356	0.45
426	0.24
432	0.11
436	0.43
444	0.30
457	1.43
467	1.73
493	0.54
508	0.26
536	0.64
537	1.03
539	0.35
542	0.32
544	0.16
550	1.18
555	2.08
578	2.84
601	$2.59-0.50=2.09$
93	0.04
132	0.34
364	0.25
110/663	0.02
132/683	$0.20-0.1=0.19$
280/14	0.11
44	2.47
443	0.27
110	0.09
443/676	0.27
270	0.17
270/665	0.16
443/677	0.16
468	0.31

		473	0.09
		345	0.06
		538	0.03
		553	1.51
		559	0.21
		653	0.09
	30	442	0.10
	36	212	0.01
		213	0.01
	50	3	0.60
	51	22	0.63
	53	328	0.02
		225	0.06
	56	114	0.06
		115	0.04
	71	216	0.04
		217	0.02
	85	214	0.02
	86	120	0.06
	98	541	0.08
		568	2.25
		584	0.07
	19	612	1.00
		621	2.59
		<u>Total =</u>	<u>39.97</u>
Karua Khurd	67	45	0.08
		443	1.03
		445	2.15
		446	0.81
		314	1.00
		114	0.31
	69	44	0.12
	70	312	0.02
		313	0.08
		316	0.01
	103	275	1.64
		276	0.74
		278	0.09
		279	0.09
		247	0.25
		277	0.08
	105	270	0.26
	110	108	0.09

	112	48	0.11
		24	0.06
		148	1.48
		141	0.48
		145	0.21
		139	0.08
		283	0.56
	114	162	0.32
		171	0.65
	116	678	2.80
	117	311	5.98
		260	0.23
		450	4.98-0.12=4.0
		314/798	1.02
		272	0.71
		273	0.13
	133	21	0.08
	144	658	2.10-0.28=1.82
		<u>Total =</u>	<u>30.33</u>
Goreya	2	174	0.53
	7	173	0.38
	38	172	0.14
		107	1.16
	41	136	2.35
		109	0.75
		108	0.68
		199	0.18
		418	0.11
		10	0.26
		171	0.15
		175	0.04
	53	411	2.12
		411	2.44
		<u>Total =</u>	<u>11.29</u>
Ranka	1	741	0.12
	26	743	0.08
	12	742	0.20
	17	901	0.12
	60	1070	1.48
	120	939/1756	0.08
	132	939/1725	0.13
	153	904	0.20
		910	0.34
	161	739	0.13

185	909	0.20
128	908	0.09
274	903	0.08
	<u>Total</u>	<u>= 3.25</u>

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that the defendant has appeared and filed his written statement and issues were also framed. Certain witnesses have been examined on behalf of the plaintiff including the plaintiff as P.W.-3 Mankali Devi. During pendency of the suit, original plaintiff-Mankali Devi transferred the land of 6.73 acres to the intervenors / present writ petitioners and other members through a registered Sale Deed No.9504 dated 10.11.2004.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that subsequently on 20.07.2005 plaintiff, Mankali Devi filed an application under Order 23 Rule 1 of the CPC, for withdrawal of the suit, relinquishing her claim in favour of the defendant.

The purchasers/ intervenors / writ petitioners, after having knowledge, they filed an application on 28.09.2005 under Order 1 Rule 10 of the CPC to protect their interest in the suit land, which they have acquired by virtue of the registered sale deed no.9504 dated 10.11.2004 to implead them as plaintiff no.2 and 3, but no order was passed either on the application filed by the plaintiff dated 20.07.2005 for withdrawal under Order 23 Rule 1 of the CPC or on the application of the intervenors / writ petitioners under Order 1 Rule 10 of the CPC dated 28.09.2005.

Subsequently, husband of the original plaintiff, Madan Pandey claiming himself, to be a power of attorney holder, filed an application on 15.12.2005 for rejection of the petition filed by the plaintiff on 20.07.2005. Subsequently, said Madan Pandey filed another application on 20.12.2005 praying therein that he does not want to press objection, raised by him on 15.12.2005. All these four petitions remained pending and Mankali Devi, sole plaintiff died on 27.12.2005. Within 90 days, the legal heirs of Mankali Devi, who are respondent Nos.7 to 13 before this Court, filed an application under Order 22 Rule 3 of the CPC to be substituted in place of Mankali Devi vide application dated 16.02.2006,

but the said application also remained pending.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that the defendants have filed a title suit being Title Suit No.27/2005 before the court of learned Sub-Judge, Garhwa, impleading the present intervenors /writ petitioners as defendant(s) in the suit. The intervenors / defendants have already filed written statement in Title Suit No.27/2005, but without amalgamating both the suits i.e. Title Suit No.27/2005 with Partition Suit No.07/1995, learned Sub-Judge, Garhwa has passed the impugned order, whereby all the applications have been disposed of, by the common order, after seven years of death of original plaintiff, Mankali Devi vide impugned order dated 28.02.2012, without allowing the substitution petition filed by the legal heirs, who are respondent Nos.7 to 13 (herein) or without allowing the interlocutory application filed by the writ petitioners under Order 1 Rule 10 CPC, being the purchasers having interest in the suit property, as such, the impugned order itself is bad in law as the same has been passed in favour of a dead person.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that it is strange that no opportunity has been given to the intervenors/ writ petitioners to assail the impugned order with regard to the order, whereby the application under Order 1 Rule 10 of the CPC has been rejected by the learned Sub-Judge, Garhwa, though it was on record, that for the same suit land, Title Suit No.27/2005 is pending before learned Sub-Judge-I, Garhwa.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that in view of the judgment passed by the Hon'ble Madras High Court in ***Civil Revision Petition No.328/1933*** reported in ***the Law Weekly, 1934, volume 39 page-521***, where the High Court of Judicature at Madras has considered several type of suits and their withdrawal petition, wherein relevant facts of this case are as follows:-

“In suits for partition, if a preliminary decree is passed declaring and defining the shares of the several parties, the suit will not be dismissed by reason of any subsequent withdrawal by the plaintiff, for the obvious reason that the rights declared in favour of the defendants under the preliminary decree would be rendered nugatory if the suit should simply be dismissed.

So also in partnership suits and suits for accounts, where the defendants too, may be entitled to some reliefs in their favour as a result of the

settlement of accounts, the withdrawal of the suit by the plaintiff cannot end in the mere dismissal of the suit. Similarly in suits for specific performance and administration suits, the withdrawal by the plaintiff should not necessarily lead to the dismissal of the suit, because some appropriate reliefs have to be given even in favour of the defendants. In a representative suit the Court need not dismiss the suit in spite of the withdrawal by the plaintiff, but it may add another person as a party in substitution of the plaintiff or transpose a defendant as plaintiff and direct the continuance of the suit.

In a suit where a compromise was set up by which certain rights were alleged to have been acquired by the defendants with the consent of the plaintiff, and the defendants produced the agreement in Court and applied for a decree in terms of the compromise, the Court declined to dismiss the suit by reason of the subsequent withdrawal of the suit by the plaintiff: vide *Tukaram Mahadu v. Ramchandra Mahadu* A.I.R. 1925 Bom. 425.

The terms of Order 23, Rule 3, Civil P.C., are equally imperative. The Court, if satisfied that the suit has been compromised, is bound to pass a decree in accordance with the terms thereof.

Another instance of the non-termination of the suit by its dismissal consequent on the withdrawal by the plaintiff is supplied in the case reported in *Mahomed Sirajuddin Sahib v. Ghulam Jailani* A.I.R. 1920 Mad. 732. In that case, one who filed the suit as a trustee subsequently put in a petition to withdraw the suit. In the circumstances of that case the Court transposed a defendant as a plaintiff and allowed the suit to be continued. It is thus clear that the rule contended for by the plaintiff is not an absolute one and many an innovation has been made on that rule.

The question therefore for consideration is whether in the special circumstances of this case there is justification for not immediately dismissing the suit in consequence of the plaintiff's withdrawal, a course which the learned Sub-ordinate Judge has thought fit to adopt by reason of the pendency of the enquiry in respect of I.A. No. 673 and 674 of 1931. It is strenuously contended for the petitioner, that as respondent 1 is not actually a party to the suit, he has no right to enforce the rajinama under Order 23, Rule 3, Civil P.C., by filing I.A. 674 of 1931, and therefore the pendency of that application should not be deemed to be a bar to the dismissal of the suit by the Court. It is however conceded that if such an application was made by the defendants themselves who are parties on record, the principle of the decision in the *Tukaram Mahadu v. Ramohandra Mahadu* A.I.R. 1925 Bom. 425 will apply. Rule 3 does not expressly say by whom the application itself should be put in. Presumably, it is a party to the suit that has to apply to the Court to record an alleged compromise as an adjustment of the suit wholly or in part. A stranger to the suit though he is a party to the compromise, may not be allowed to apply for its enforcement in that suit without his being impleaded in it as a party.

If the 1st respondent is an assignee of an interest in the subject-matter of the suit from defendants 1 and 3 under this compromise agreement, the suit may by leave of the Court be continued by or against him under Order 22, Rule 10, Civil P.C. The acquisition of such a right may weigh with the Court in exercising its discretion for adding him as a party on his application under Order 1, Rule 10.

Coming now to the question whether the mere circumstance of a person not being actually a party on record is a bar to his filing an application under Order 23, Rule 3; I can take a concrete illustration. Suppose a plaintiff has filed a suit against two persons as defendants, and a rajinama has been entered into as between them. If one of the defendants subsequently dies and his legal representative wants to apply to the Court to enforce that rajinama, what has he to do? He will apply to be made a party in the place of the deceased defendant, and put in the rajinama for its enforcement. Suppose at that stage the plaintiff files a petition stating that he withdraws the suit. Can the Court merely dismiss the suit without enquiring into those petitions put in by the alleged legal representative of the deceased defendant? There is in such a case no question of the dismissal of the suit being the necessary result of the withdrawal by the plaintiff.

(Emphasis supplied)

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further placed reliance upon the judgment passed by the Apex Court in the case of ***R. Dhanasundari @ R. Rajeswari Vs. A. N. Umakanth and Others*** reported in ***(2020) 14 SCC 1*** at paras-10 and 11, which may profitably be quoted hereunder:-

“10. It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. This Court explained the principles, albeit in a different context, in the case of [Anil Kumar Singh v. Shivnath Mishra](#): (1995) 3 SCC 147 in the following:-

“7. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject- matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

*11. As per Rule 1-A *ibid.*, in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a pro forma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as 1 Inserted by the [Amendment Act](#) No. 104 of 1976 plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A *ibid.* leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A *ibid.* would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.”*

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further placed reliance upon the judgment passed by the Apex Court in the case of ***Pruthvirajsinh Nodhubha Jadeja (dead) by legal representatives Vs. Jayeshkumar Chhakaddas Shah and Others***, reported in ***(2019) 9 SCC 533*** at paras-10 and 11, which may profitably be quoted hereunder:-

“10. The next question is what is the effect of the legal heirs of MMT withdrawing the suit. As noted by us above, JCS filed an application for being joined as plaintiff no. 2 in the suit on 02.07.2007. Subsequently, a settlement was arrived at between respondent nos. 2(A) to 2(D) and the appellants on 06.07.2007 and only thereafter on 19.07.2007, the legal heirs of the original plaintiff filed an application for unconditional withdrawal of the suit.

11. The trial court was seized of both the applications together. The trial court should have, in our opinion, not dismissed the application filed by JCS. We may note that the so called settlement agreement clearly shows that respondent nos. 2(A) to 2(D) had not received any amount from the appellants. There was no transfer of interest in favour of the appellants by this document. All that the respondent nos. 2(A) to 2(D) said was that they stood by the sale

deed executed by their father through the power of attorney in favour of the appellants. On the other hand, JCS claimed that MMT had sold the land for Rs.10,00,000/, payment of which was made by cheque. It is thus obvious that JCS had a vital interest in the suit and had a right to continue the suit. We are prima facie of the view that JCS need not even challenge the so called settlement because that settlement does not, in any way, create any title, right or interest in the suit parties. Therefore, we hold that JCS had a vital interest in the suit. The issue whether MMT had authorised respondent no. 3 to sell the land and whether respondent no. 3 had actually sold the land, can only be decided in this suit and not in any fresh suit filed by JCS. We are, therefore, clearly of the view that JCS is entitled to continue the suit despite respondent nos. 2(A) to 2(D) having compromised the matter and withdrawn from the suit. Their withdrawal can have no impact on the rights of JCS."

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has submitted, that no opportunity to assail the rejection of application under Order 1 Rule 10 of the CPC has been provided by the trial court before allowing a withdrawal petition filed on 20.07.2005 by the plaintiff, who subsequently died on 27.12.2005, but without allowing the application for substitution of the plaintiff filed by legal heirs, who are respondent Nos. 7 to 13 (herein) on 16.02.2006 under Order 22 Rule 3 of the CPC, rather the impugned order has been passed after approximately seven years of filing of withdrawal application or death of the plaintiff or without substituting the legal heirs of the plaintiff.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that the impugned order is bad in law for the reasons that it has been passed in favour of dead person, but without impleading the legal heirs, though the application of legal heirs was pending before the court below for seven years. However, the court below has not considered the interest that has accrued in favour of the intervenors /writ petitioners, who are contesting for the same suit land in a different title suit i.e. Title Suit No.27/2005 filed by legal heirs of defendant of Partition Suit No.07/1995.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that withdrawal of the interest of the plaintiff in favour of the defendant in Partition Suit No.07/1995 has virtually put the title of the intervenors / writ petitioners at stake, as such, it was incumbent upon learned trial court to examine and would have allowed the intervenors to be impleaded as plaintiff nos.2 and 3. If the plaintiff no.1 was not interested in pursuing the matter or plaintiff no.1 has died or her legal heirs have not been impleaded as party or they have not filed any

application, even then the learned court ought to have considered the interest of the intervenors /writ petitioners before allowing such application for withdrawal.

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari has further submitted, that withdrawal of Partition Suit No.07/1995 has not minimized the litigation, rather it has made the litigation more clumsy as by amalgamating the Partition Suit No.07/1995 with Title Suit No.27/2005, the court would have adjudicated the issue, which would have attained finality, but instead of that, the court below has passed such an order, where the entire thing has become more clumsy and it will invite multiplicity of the suits and applications and also enlarge the scope of litigation between the parties with respect to the same suit land, as such, the impugned order is virtually bad in law, which is also *non est* in the eyes of law and may be set aside.

Learned counsel, Mr. Anand Kumar Pandey appearing for the respondent No.7 to 10, who are none else than the legal heirs of the original plaintiff -Mankali Devi have also opposed the impugned order though they have not preferred any application before this Court by submitting that legal heirs have already filed an application on 16.02.2006 to substitute in place of the original plaintiff -Mankali Devi, who died on 27.12.2005 within 90 days and it was incumbent upon the trial court to substitute the name of the legal heirs in place of the plaintiff, but that application has also been disposed of, without allowing such substitution petition and an order has been passed in favour of a dead person.

Learned counsel for the respondent nos.7 to 10 (legal heirs of the original plaintiff), Mr. Anand Kumar Pandey has submitted, that it is relevant to mention here that legal heirs of Jugal Kishore Tiwari namely Gayatri Devi and others have filed Probate Case No.04/1998 against Mankali Devi and after death of Mankali Devi her legal heirs, namely, Madan Pandey and others have been substituted and the said probate case was contested, which was renumbered as Title Suit No.05/2000 and the said suit was dismissed with cost in terms of judgment dated 07.04.2006 passed by District Judge, Garhwa, which was assailed before this Court in M.A. No.144/2006, which is pending before this Court. Copy of the said

judgment has been produced in the Court, which is kept on record.

Learned counsel, Mr. Om Prakash Tiwari appearing for the contesting respondent Nos.2 to 5 i.e. defendants of Partition Suit No.07/1995, who are the legal heirs of the original defendant -Jugal Kishore Tiwari has submitted, that the intervenors/ writ petitioners are relying upon the sale deed, which is under cloud in Title Suit No.27/2005, as such, their application has rightly been rejected by the Court below.

Learned counsel for the respondents, Mr. Om Prakash Tiwari has submitted, that spirit of Order 22 Rule 1 of the CPC has been considered in the judgment passed by the Apex Court in the case of ***Shiv Prasad Vs. Durga Prasad and Another*** reported in ***(1975) 1 SCC 405*** at relevant part of para-12 of the said judgment, which is as under:-

“12. Every applicant has a right to unconditionally withdrawn his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application. The Court may a formal order disposing of the application as withdrawal but withdrawal is not dependent on the order of the Court. The act of the withdrawal is complete as soon as the applicant intimates the Court that he withdraws the application.”

Learned counsel for the petitioners, Mr. Sanjay Kumar Tiwari in reply has submitted, that the judgment relied by learned counsel for the defendants / respondents passed by the Apex Court in the case of ***Shiv Prasad Vs. Durga Prasad and Another (Supra)*** at para-12 is not applicable in the facts and circumstances of the present case as the same deals with under Order 21 Rule 89 of the CPC, as such, the learned Sub-Judge, Garhwa has wrongly passed such order by placing reliance, rather the Sub-Judge, Garhwa ought to have considered the same while allowing the withdrawal petitions.

After hearing learned counsel for the parties and on the basis of the materials available on record, it appears that two suits were pending before the different courts having civil jurisdiction in the district of Garhwa in the State of Jharkhand, one preferred by the plaintiff -Mankali Devi vide Partition Suit No.07/1995, where pleading was complete and part of the evidence has been recorded and the plaintiff -Mankali Devi has herself been examined as P.W.-3. She has also sold part of the property of her, 50 % share in favour of the interevenors, who are writ petitioners before this Court. The sale deed of the intervenors / writ petitioners has been assailed by the defendant- Gayatri Devi and others in Title Suit

No.27/2005 in the Court of learned Sub Judge-I, Garhwa. It further appears that not only this the probate case preferred by legal heirs of Jugal Kishore Tiwari, namely Gayatri Devi and others vide Probate Case No.04/1998, which was renumbered as Title Suit No.05/2000 was also dismissed by the learned District Judge, Garhwa on 07.04.2006 and against the same, M.A. No.144/2006 has been preferred before this Court, which is pending.

It appears that learned (Sub Judge-II) Civil Judge, Senior Division, Garhwa while passing the impugned order dated 28.02.2012 has committed illegality, as it was passed in favour of a dead person on the application after seven years of the filing, but without impleading the legal heirs, whose application was pending, but without considering the interest accrued in favour of the intervenors/ writ petitioners, for which title suit is pending vide Title Suit No.27/2005. However, the Sub-Judge, Garhwa ought to have amalgamated both the suits, so as to minimize the litigation, rather order of such withdrawal by the learned Sub-Judge, Garhwa on an application filed by plaintiff, after his death, is non est in the eyes of law, which cannot sustain in the eyes of law, accordingly, the same is hereby set aside.

Accordingly, the instant writ petition is hereby allowed.

However, in the exercise of the power under Article 227 of the Constitution of India, the application filed by the writ petitioners as intervenors under Order 1 Rule 10 of the CPC in Partition Suit No.07/1995 is hereby allowed. As such, they be impleaded as plaintiff nos.2 and 3.

So far the substitution petition filed by the legal heirs of Mankali Devi [respondent No.7 to 13] is concerned, the same is also hereby allowed and they will be substituted as plaintiff Nos. 1(i) to 1(vii).

Further, both the suits pending for the common suit property are hereby ordered to be amalgamated, so as to minimize the litigation between the parties. Thus, partition suit no.07/1995 be amalgamated with Title Suit no.27/2005.

Parties are hereby directed to appear before the court below on 16.05.2022.

Let a copy of this order be communicated to the concerned Sub-Judge, Garhwa as well as Principal District Judge, Garhwa for compliance of the order through FAX /E-mail.

(Kailash Prasad Deo, J.)

Sandeep-Jay/