

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1794 of 2017

- 1.1. Dinesh Kumar Issar Son of Late Binda Prasad Issar Resident of Vilage and P.O. - Sinuura, P.S. - Laheriasarai, District- Darbhanga.
- 1.2. Chandra Mohan Issar Son of Late Binda Prasad Issar, Resident of Vilage and P.O. - Sinuura, P.S. - Laheriasarai, District- Darbhanga.
- 1.3. Sanjeet Kumar Issar Son of Late Binda Prasad Issar Resident of Vilage and P.O. - Sinuura, P.S. - Laheriasarai, District- Darbhanga.
- 1.4. Sanju Rai D/o Late Binda Prasad Issar Wife of Subash Chandra Rai, Resident of Village and P.o. Bithauli, P.S. - Baheri, District- Darbhanga.
2. Nand Nandan Issar Son of late Mukund Issar
3. Hare Ram Issar Son of late Mukund Issar
4. Most. Meera Devi Wife of Late Ram Bilash Issar
5. Sudhir Kumar Issar Son of late Ram Bilash Issar
6. Kamini Kumari Daughter of late Ram Bilash Issar All are Resident of Village- Sadipurghat, P.O.- Sadipurghat, P.S. Khanpur, District- SamastipurBihar.
7. Ram Dai Issar Wife of Ram Sagar Chodhary Resident of Village and P.O. - Sinuura, P.S.- Laheria Sarai, District- DarbhangaBihar.

... .. Petitioner/s

Versus

1. Devendra Jha and Ors Son of Jagdish Jha Resident of Village- Tekunamath , P.O.- Bharwari, P.S.- Rosera, District- SamastipurBihar.
2. Satya Narayan Rai Son of late Ram Punit Roy
3. Sita Ram Rai Son of late Ram Punit Roy
4. Ganesh Rai Son of late Ram Punit Roy Sl. No. 2 to 4 are Resident of Village- Sadipur Ghat, Tola- Khairvan, P.O.- Sadipur Ghat, P.S.- Khanpur, District- SamastipurBihar.
- 5.1. Murari Issar Son of Late Rukmani Kant Issar, Resident of Village and P.O. - Sadipur Ghat, P.S. - Khanpur, District- Samastipur.
- 5.2. Tripurari Issar Son of Late Rukmani Kant Issar, Resident of Village and P.O. - Sadipur Ghat, P.S. - Khanpur, District- Samastipur.
6. Rajesh Kumar Issar Son of late Damodar Issar
7. Ranjeet Kumar Issar Son of late Damodar Issar
8. Madan Mohan Issar Son of late Ramakant Issar
9. Sharda Nand Issar Son of late Ramakant Issar
10. Bina Nand Issar Son of late Ramakant Issar Sl. No. 5 to 10 are Resident of Village- Sadipurghat, P.O.- Sadipurghat, P.S. Khanpur, District- SamastipurBihar.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Prabhat Kumar Dipak

For the Respondent/s : Mr.Ajay Kumar

**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT**

Date : 23-03-2026

The present civil miscellaneous application has been preferred for issuance of writ in the nature of certiorari or other appropriate writ for setting aside the order dated 24.08.2017 passed by learned Civil Judge, Sr. Division, Samastipur in Title Suit No. 145 of 1997.

2. Heard learned counsel for both the parties.

3. Learned counsel for the petitioner submits that the petitioner has filed Title Suit No. 145 of 1997 in which apart from relief regarding declaration of his title and possession, he has also sought for that the decree passed in previous Title Suit No. 128 of 1989 on the basis of compromise between the parties, be declared as void ab initio, illegal and inoperative against the plaintiffs.

4. He further submits that in the aforesaid title suit, the plaintiff has completed his evidence and the matter is presently going on for evidence of defendant/respondent. Subsequently he came to know that he has chosen a wrong forum to file this suit because suit ought to have been filed



before the same Court by which the decree was passed in previous Suit no. 128 of 1989 and not a regular suit. After coming to know this fact, plaintiff/petitioner filed a petition to convert the said Title Suit No. 145 of 1997 in miscellaneous suit so that the illegality in judgment and order passed in previous Title Suit No. 128 of 1989 under Order XXIII of the Code of Civil Procedure on the basis of compromise, be adjudicated, which has been rejected by the impugned order dated 24.08.2017.

5. Learned counsel appearing on behalf of the respondents submits that after much delay this petition has been filed which is not not maintainable.

6. To buttress his argument, learned counsel for the petitioner has placed reliance on the judgments rendered in **Sushma Devi vs. Most. Sona Devi** reported in **2013 (2) PLJR 109** and **Smt. Prabhawati Sinha vs. Heera Rai** reported in **2010 (1) PLJR 560**.

6.1 Paragraph 21 of judgment passed in the case of **Smt. Prabhawati Sinha vs. Heera Rai** has been reiterated below:-

"21. I do not find any force in the submissions raised on behalf of the petitioner.



Interest of justice cannot be held to be subservient to the hyper-technicalities. The petitioner has appeared in the case has filed written statement and participated in the suit also subsequently. It is also the fact that the procedure for disposal of the miscellaneous case would also be similar to that which has been prescribed in the Code for disposal of the suits. Therefore, in my opinion, if the suit is allowed to be converted into a miscellaneous case, then it will prejudice none of the parties. Thus, ex debito justitiae this Court thinks it proper that the plaintiffs opposite parties may be allowed to convert the suit into a miscellaneous case. This prayer of the opposite parties is allowed. They may be allowed by the trial court to convert the title suit concerned into a miscellaneous case within two months from the date of receipt or production of a copy of this order."

7. Similar issues have been decided in the case of **Sushma Devi vs. Most. Sona Devi** reported in **2013 (2) PLJR 109** in which judgment of Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy** has been relied upon.



Paragraph 9 of the said judgment reads as follows:-

"9. This bring us to the issue whether the court concerned could have entertained the application under section 151 of the Code after having reserved the case for judgment. The powers vested in court under section 151 of the Code has been summarized in a recent pronouncement of the Supreme Court reported in (2011) 11 SCC 275 [: 2011(2) PLJR (SC) 138] (**K.K. Velusamy vs. N. Palanisamy**) more particularly in paragraph 12 thereof and paragraph 15 of the same is a complete answer to the issue posed before this Court. I am tempted to refer to the said paragraphs which runs as follows:

"15. The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice



require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under Section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments."

7. After hearing both the parties it is apparent that the plaintiff has chosen a wrong forum to adjudicate this matter in issue in said title suit. Almost so many years have lapsed for adjudication of this suit and due to want of jurisdiction again this case cannot be dismissed because both parties would be again harassed and it will cause multiplicity of suits. So, it would be better for the ends of justice and proper adjudication of the suit that the suit be converted into miscellaneous suit to save the time of both the parties and evidence adduced on behalf of both the parties also be utilized in the miscellaneous case.



8. Learned counsel appearing on behalf of respondent IInd Set, who claims themselves as purchaser of respondent Ist Set, Devendra Jha after compromise decree passed in Title Suit No. 128 of 1989, submits that they were not party in earlier title suit. The aforesaid argument does not makes any difference because their vendors were already party in the said Title Suit No. 128 of 1989 and purchaser cannot acquire better title than what their vendor was possessing.

9. Considering the entire facts, the impugned order dated 24.08.2017 is set aside at the cost of Rs. 2,000/- payable to compensate the defendant for delay and the Title Suit No. 145 of 1997 is directed to be transferred before the Court by which the earlier Title Suit No. 128 of 1989 was decided, after instituting/re-numbering as miscellaneous case.

10. Accordingly, present civil miscellaneous application stands disposed of.

(S. B. Pd. Singh, J)

prabhakar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.04.2026
Transmission Date	N/A

