

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.261 of 2017**

Asha Devi daughter of Late Laxman Paswan, resident of Village- Katiya, Police Station- Bihia, District- Bhojpur at presently residing at Pakri Ara, Police Station- Nawada Ara, District- Bhojpur.

... .. Petitioner/s

Versus

1. Daulatiya Kunwar, daughter of Basropan Ram.
2. Dinesh Kumar Ram, Son of Late Nand Kishore Ram.
3. Bijesh Kumar Ram, son of Late Nand Kishore Ram.
4. Pradeep Kumar Ram, Son of Late Nand Kishore Ram.
5. Raju Kumar Ram, Son of Late Nand Kishore Ram,
All SL. No. 1 to 5 are residents of Village- Kateya, Police Station- Bihia, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Singh, Advocate
Mr. Uday Kumar, Advocate
For the Respondent/s : None.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 14-05-2024

Heard learned counsel for the petitioner.

2. Despite opportunity, no one is present on behalf of the respondents.

3. The present petition has been filed under Article 227 of the Constitution of India against the order dated 22.10.2016 passed by learned Sub Judge-IV, Ara in Misc. Case No. 33 of 2010 whereby and whereunder the substitution petition filed by petitioner for substituting the heirs/legal representatives of deceased Gauri Shankar Ram has been rejected.



4. Learned counsel for the petitioner submits that the mother of the petitioner filed a suit for partition *vide* Title Partition Suit No. 462 of 2002 before the Court of learned Sub Judge-Ist, Ara for partition of half share in joint family property with further prayer that survey entry in the name of defendant nos. 1 & 2 be declared wrong and incorrect. During pendency of the title partition suit, the original plaintiff (mother of the petitioner) died on 26.12.2009 and the petitioner filed a petition for her substitution in place of her mother and *vide* order dated 17.09.2010, substitution petition was allowed. However, due to mistake of office, name of the petitioner could not be brought on record. Learned counsel further submits that defendant in the title suit filed a petition on 18.01.2010 informing the Court about the death of Gauri Shankar Ram, one of the defendants, who died on 07.06.2008. However, the title suit was dismissed on 21.11.2010. Thereafter, the present petitioner filed Miscellaneous Case No. 33 of 2010 under Order 9, Rule-9 read with Section 151 of the Code of Civil Procedure (in short 'the Code') for restoration of Title Suit No. 462 of 2002 stating the entire facts. The respondents who were defendants filed an objection and claimed that the petitioner was having full knowledge about death of defendant no.1, despite that she did



not prosecute her case properly and she has not shown sufficient cause for recall of the order dated 21.11.2010. During pendency of the Miscellaneous Case No. 33 of 2010, the petitioner filed an application for substitution of the heirs/legal representatives of deceased defendant no. 1 Gauri Shankar Ram with a petition for condonation of delay. The learned Sub Judge IV, Ara rejected the substitution petition filed by the petitioner vide order dated 22.10.2016. Learned counsel for the petitioner further submits that the learned trial court failed to consider the fact that the petitioner is a rustic lady and she was not aware about the processes before the Court. Further the petitioner got herself substituted in place of her mother and she was not having any knowledge about death of defendant no. 1 Gauri Shankar Ram. The petitioner has been residing in Village- Pakri, Ara, whereas the deceased defendant no. 1 Gauri Shankar Ram has been residing in Village-Katiya, P.S.- Bihiya, Ara. Learned counsel further submits that the learned trial court rejected the petition for substitution and condonation of delay only on the ground that petitioner was having full knowledge about death of defendant no. 1 still she failed to bring legal heirs on record within time. Learned counsel further submits that there is no deliberate laches or delay on part of the petitioner and she



should be given an opportunity to contest the case before the learned trial court as she has been unduly penalized for so many years for no fault of her, whatever fault has been attributed to the petitioner, the same is more or less attributable on part of the counsel of the petitioner. Thus, learned counsel submits that in the interest of justice, the petitioner should be given an opportunity to prosecute her miscellaneous case.

5. I have given my thoughtful consideration to the submission made on behalf of the petitioner and to the facts of the case. Admittedly, the petitioner came to be substituted in place of her mother on 17.09.2010 and the defendants brought to the notice of the Court on 18.01.2010 that Gauri Shankar Ram has died. So, after substitution, knowledge has been attributed to the petitioner and, for this reason, the learned trial court held that despite having full knowledge, the petitioner failed to substitute the deceased defendant either in the title suit or in the miscellaneous case.

6. Further, considering the settled principle of law that every person should get an opportunity to prosecute her case and this opportunity should not be denied on mere technicalities, I think an opportunity could be given to the petitioner but subject to imposition of certain cost.



7. Therefore, without going into merits of the case and in the interest of justice, the order dated 22.10.2016 passed by learned Sub Judge-IV, Ara is set aside subject to payment of cost of Rs.5,000/-(Five Thousand) by the petitioner to the respondents on first date of hearing before the learned trial court.

8. Accordingly, the petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.05.2024
Transmission Date	N/A

