

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.35 of 1990**

**IN**

**First Appeal No. 659 of 1978**

1. Shri Chandra Kishore Dixit Duttak Putra of Late Dukhan Dixit, by caste Brahmin Kanyakubja resident of Mohalla Saraiyaganj, Sikandarpur Road, Town of Muzaffarpur, P.O. and P.S. and District – Muzaffarpur at present residing at village – Pakri Dixit, P.S. Kesaria, District – East Champaran, Sebait of the deity, Shri Ram Janki.

2. Shri Ram Jankiji, the deities installed in the temple at Mohalla Saraiyaganj, Town of Muzaffarpur, Sikandarpur Road and District Muzaffarpur through Chandra Kishore Dixit next friend of deity and their Seibat of Village Pakri Dixit, P.S. Kesaria, District – East Champaran

.... .... Appellant/s

Versus

1(a) Virendra Mishra

1(b) Rajendra Mishra

1(c ) Laddu Lal Mishra. All sons of Late Jitendra Mishra, Vill Rampur Khajuria, P.S. Kesharia, District East Champran, at present at Ram Janki Mandir, Sitamarhi Road, Mohalla Saraiyaganj, Town, P.S. and District Muzaffarpur

1(d) Premshila Devi, wife of Yogendra Mishra, Mohalla, P.S. Kesharia, District East Champaran

1(e) Dharamshila Devi @ Murti Devi wife of Ramjit Pathak, Village Kesharia, District East Champaran

1(f) Munni Kumari

1(g) Punam Kumari, Minor daughter of late Jitendra Mishra under the guardianship of their mother, Smt. Lalmati Devi., Both resident of village Rampur Khajuria, P.S. Kesharia, District East Champaran. At present residing at Ram Janki Mandir, Sitamarhi Road, Mohalla Saraiyaganj, Town, P.S. and District Muzaffarpur

2. Smt. Lalmati Devi wife of Sri Jitendra Mishra alias Dhaneshwar Mishra, resident of village Rampur Khajuria, P.S. Kesharia, District – East Champaran at Present residing at Ram Janki Mandir, Sitamarhi Road, Mohalla Saraiyaganj, Town Muzaffarpur, P.S. and District – Muzaffarpur ..... (Defendant Ist set- appellants)

Respondent Ist Set

3(i) Baban Devi wife of Late Ramdeo Dixit

3(ii) Uday Narain Dixit

3(iii) Nawal Kishore Dixit

3(iv) Vijay Kumar Dixit. All sons of Late Ramdeo Dixit, residents of village, Dixit Pakri, P.S. Kalyanpur, District East Champaran

3(v) Mudrika Devi wife of Ajay Kumar Mishra, village Bishunpur, P.S. Paru, District Muzaffarpur

4. Ramdeo Dixit son of Surgrib Dikshit deceased. Both resident of village Pakari Dixit, P.S. Kesharia at present, resident of Kalyanpur, District – East Champaran

.... .... Respondent/s

**Appearance :**

For the Appellant/s : Miss Surya Nilambari, Advocate

For the Respondent no.3(v) : Mr. Pancham Lal Jaiswal, Advocate

**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA**

**and**

**HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE V.N. SINHA)**

**Date: 21-07-2015**

Heard learned counsel for the appellants and Sri P.L.

Jaiswal for Respondent no. 3(v). Other respondents though served, but have not chosen to appear.

2. Plaintiffs are the appellants herein. By filing this appeal, appellants have assailed the judgment of the learned Single Judge dated 04.04.1990 passed in First Appeal No. 659 of 1978 whereunder judgment and decree dated 28.07.1978 holding plaintiff no.1 to be the sole Sebait of plaintiff no.2 has been set aside and the suit dismissed.

3. Plaintiffs-appellants filed the aforesaid suit praying, inter alia, to declare that plaintiff no.1 was the sole Sebait of plaintiff no.2 and his title over the said office has been clouded by defendant nos. 1 and 2, who have forcibly usurped the said office from him. While making the said prayer, plaintiffs-appellants did not make prayer for recovery of the properties dedicated to plaintiff no.2 under registered Samarpannama dated 13.12.1940 and this Court under the impugned judgment dated 04.04.1990 having noticed the said omission, proceeded to dismiss the suit. In this connection, learned Single Judge has considered the submissions in paragraph 11 at page

7 of the impugned judgment and has held that it was very much essential for plaintiff no.1 to have prayed for recovery of the properties of plaintiff no.2, otherwise the suit is barred by Section 34 of the Specific Relief Act, 1963. In this connection, learned Single Judge has lucidly considered the meaning of the “expression office” and found no substance in the argument that expression office of Sebaiship of plaintiff no.2 will include property of plaintiff no.2. Single Judge also rejected the submission that even at the stage of first appeal, plaintiffs-appellants could have been granted liberty to amend the plaint seeking further relief for recovery of property of plaintiff no.2.

4. We see no reason to interfere with the impugned judgment. The appeal is, accordingly, dismissed.

**(V.N. Sinha, J.)**

**(Jitendra Mohan Sharma, J.)**

Arjun/-

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