

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.201 of 2014

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1. Shambhu Nath Sharma S/O Late Ram Parichhan Sharma
2. Kanchan Sharma @ Kanchan Devi W/O Late Ramnath Sharma
3. Ajay Kumar Sharma @ Ajay Sharma S/O Late Ram Nath Sharma All
resident Of Village And P.O.- Agarpur, P.S.- Lalganj, District- Vaishali

.... Petitioner/s

Versus

1. Rabindra Kumar Sharma S/O Late Ram Parikshan Sharma, Resident Of
Village And P.O.- Agarpur, P.S.- Lalganj, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 04-12-2015 Heard Mr. Manish Chandra Gandhi, learned counsel for
the petitioners.

By the impugned order dated 19.08.2013, the learned
Sub-Judge-3rd, Vaishali at Hajipur, refused to dismiss Partition
Suit No. 220 of 2008 on the ground of maintainability.

It appears that the sole respondent along with one
Ramnath Sharma filed aforesaid Partition Suit against the
defendant. The defendant filed a petition before the court below
for dismissal of the suit alleging that Ramnath Sharma, who is
plaintiff no.2 has already died in the year 1984 and some other
person has been added as plaintiff no.2 as Ramnath Sharma,
therefore, Partition Suit is liable to be dismissed as not

maintainable at the instance of a person, who is not Ramnath Sharma. The petitioners are shown wrongly to be the son and widow of the plaintiff no.2. Both the parties in support of their cases filed some documents in the court below and by the impugned order the court below has simply dismissed the application filed by the petitioners.

Admittedly, till today, as submitted by the learned counsel for the petitioners, no written statement has been filed.

So far primarily objection is concerned, it is only submitted that the suit is not maintainable because plaintiff no.2 has already died and plaintiff no.2 added herein in the Partition Suit is not Ramnath Sharma.

In my opinion, this question can only be decided after adducing the evidence that may be adduced by the parties. Therefore, the court below has rejected the application. Thus, the impugned order cannot be interfered with at this stage.

Accordingly, this application is dismissed.

(Mungeshwar Sahoo, J)

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