

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1266 of 2000

IN

Miscellaneous Jurisdiction Case No. 1514 of 2000

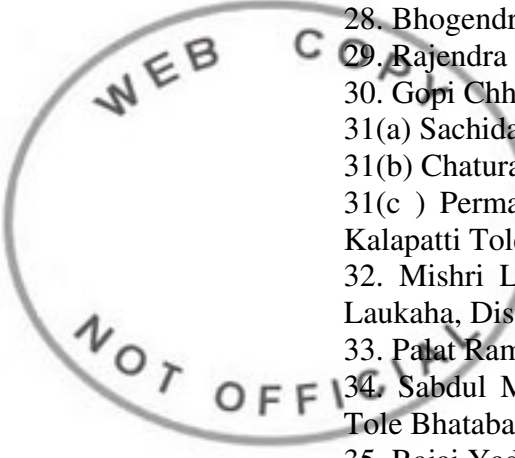
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- 1(a)(i) Narayan Sahu, S/o not known
 - 1(a)(ii) Madan Sahu, S/o not known
 - 1(b) Bachani Devi daughter of Jailal Sah
 2. Mishri Lal Sahu, son of Jailal Sahu
 3. Ram Babu Sahu minor son of Mishri Lal Sahu under the guardianship of Mishri Lal Sahu father and next friend
 4. Ram Autar Sahu son of Ram Kishun Sahu
 5. Badri Narain Sahu son of Ram Kishun Sahu
 6. Kedar Nath Sahu, son of Ram Kishun Sahu
 7. Jiwach Lal Sah, son of Bhadai Sah
 8. Kishori Lal Sah son of Bhadai Sah
 9. Suresh Prasad Sah son of Jiwach Lal Sah
 10. Dharam Lal Sah son of Jiwach Lal Sah
 11. Narain Sah son of Kishori Lal Sah
 12. Mahendra Pd. Sah son of Kishori Lal Sah
 - 13(a) Durga Devi, wife of Bajari Sah
 - 14(a) Bhagwati Devi wife of Late Sitaram Sah, Resident of Village – Balua gobrahi, P.S. Phulparas, District Madhubani
 - 14(b) Gyatri Devi wife of Bhuleswar Sah, Village – Kalripatti, P.S. Khutouna, District Madhubani
 - 14(c) Manju Devi wife of Late Madhubani Sah, village Khusidalpatti, P.S. Parsahi, District Madhubani
 15. Jagdish Prasad Sah, son of Sitaram Sah
 16. Gopal Sah, son of Sitaram Sah
 17. Dinesh Prasad Sah, son of Sitaram Sah
 18. Lal Bahadur Sah son of Sitaram Sah
 19. Ashok Kumar Sah son of Ram Prasad Sah
 20. Ganga Prasad Sah, son of Bajari Sah
 21. Laxmi Sah, son of Bajari Sah
 22. Ram Sagar Sah, son of Jalpi Sah
 23. Deosagar Sah, son of Jalpi Sah
 24. Siri Prasad Sah, son of Asharfi Sah
 25. Bachan Sah @ Tuntun Sah, son of Asharifi Sah under the guardianship of Asharfi Sah, father and next friend
 26. Jiwachh Lal Sahu, son of Babujee Sahu
 27. Biltu Sahu, son of Babujee Sahu
 28. Prabhu Lal Sahu son of Thithar Sahu
 29. Dhundhkari Sahu, son of late Thithar Sahu.
 30. Binod Kumar Sahu son of Prabhu Lal Sahu. All resident of village – Baluagowarahi, Pergana Alapur, P.S. – Phulparas, District – Madhubani, District Madhubani

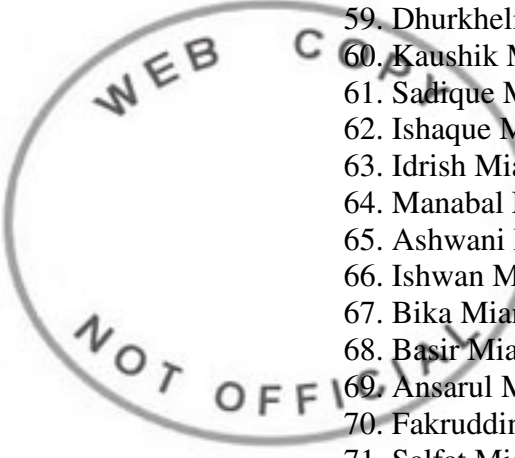
.... Appellants (Petitioners)

Versus

- 1(a) Sujan Devi, D/o Bahuri Sah
- 1(b) Parmila Devi D/o Bahari Sah

- 1(c) Urmila Devi D/o Bahuri Sah
1(d) Sivjee Sah, son of Bahuri Sah.
1(e) Dukhani D/o Bahuri Sah
2. Magdu Ram Sah son of Bahuri Sah
3. Chandrakala Devi wife of Ganga Prasad Sahu, village Garhia, P.S. Raghapur, District Supaul
4(i) Shushila Devi wife of Motilal Sahu
4(ii) Sanjay Sahu, son of late Motilal Sahu
5. Mayaram Sah son of Munga Lal Sah
6. Daya Ram Sah son of Munga Lal Sah
7. Ganga Ram Sah Minor son of Munga Lal Sah under the Guardianship of their father Munga Lal Sah
8. Durga Nand Sah Minor son of Munga Lal Sah under the guardianship of their father Munga Lal Sah
9(a) Bouki Devi D/o Maya Ram Sah
9(b) Khatari Devi D/o Maya Ram Sah
10. Sahablal Sah
11. Mohan Lal Sah
12. Arjun Kumar Sah, from 10 to 12 Minor sons of Motilal Sah under the guardianship of their father Motilal Sah. All residents of village – Balua Gowarahi Pargana Alapur, P.S. – Phulparas District Madhubani
..... (Plaintiffs) Respondent 1st party
- 13(a). Jawahar Sahu son of Most. Bilti
13(b). Dalo Devi (Daughter) wife of Ram Kripal Sahu
14. Nathuni Sah son of Kishun Sahu, resident of village Bairbano, P.S. Phulparas District Madhubani
15(i) Prabhulal Sah S/o not known
15(ii) Rameshwar Sah, son of Prabhulal Sah
15(iii) Jageswar Sah son of Prabhulal Sah
15(iv) Nageswar Sah son of Prabhulal Sah, all resident of village Patharahi, P.S. Phulparas District Madhubani
16. Balram Sah, son of Sheo nath Sahu, resident of village – Kulhariya, P.S. – Kishanpur, District – Saharsa.
17(i) Ramakant Sahu
17(ii) Umakant Sahu, both sons of Kusumlal Sah, resident of village Kulhariya, P.O. Mouyahi, via Kirmali Baxar, Pargana Naradigar, P.S. Kumarganj, District Saharsa
18. Laxmi Chand Sahu, son of Gosai Sahu
19. Daddu Lal Sahu son of Gosai Sahu
20. Manik Lal Sahu son of Gosai Sahu
21. Jagilal Sahu son of Gosai Sahu
22. Ram Bilash Sahu son of Gosai Sahu
23. Srimati Durgawai wife of Bajrai Sahu and Mother of deceased minor defendant no. 29 who died on 21.9.68. Respondent nos. 18 to 22 residents of village Mojivasi Pargana Alapur, P.S. Laukahi, District Madhubani
..... Respondent 2nd party
- 24(a). Rajendra Thakur, son of Ramsundar Thakur
24(b) Gopal Thakur son of Late Mahendra Thakur. All resident of village Baliya Kusumar, P.S. Phulparas, District Madhubani
25. Ratneshwar Sahu son of Late Asarfi Sahu, resident of village Dhanouja Nautole P.S. Phulparas, District of Madhubani
26(a). Kashindra Sahu

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- 26(b) Banke Sahu, both sons of late Sifait Lal Sahu, resident of village Kalapatti Tole Barhi, P.S. – Phulparas, District Madhubani
27. Jogendra Chhitan, son of Shri Ram Chhitan
28. Bhogendra Chhitan son of Shri Ram Chhitan
29. Rajendra Chhitan son of Shri Ram Chhitan
30. Gopi Chhitan son of Shri Ram Chhitan
- 31(a) Sachidanand Chhittan
- 31(b) Chaturanand Chhittan
- 31(c) Permanand Chhittan, all sons of Late Lalan Chhittan, resident of village Kalapatti Tole Bhatabari, Pargana Alapur, P.S. Phulparas, District Madhubani
32. Mishri Lal Yadav, son of not known resident of village Baradhaut, P.S. – Laukaha, District Madhubani
33. Palat Ram son of late Janak Chamar
34. Sabdul Mian, son of Asharfi Mian, deceased. Residents of village Kalapatti Tole Bhatabari, P.S. Phulparas, District Madhubani
35. Rajai Yadav son of Late Sunder Yadav
- 36(a). Awanju Mian, son of Kali Mian
- 36(b). Issa Mian son of Kali Mian
- 36(c) Baib Mian son of Kali Mian, resident of village Baga Kusumar, P.S. Phulparas, District Madhubani
37. Latif Mian, son of Nurai Mian
- 38(i). Islam Mian son of late Santi Mian
- 38(ii) Hazrat Mian son of Late Saiti Mian
39. Madhusudan Miyan son of Late Mansoor Mian
40. Kajbool Mian, son of Masul Mian
41. Majahir Mian son of Masul Mian
42. Issa Mian, son of Rahman Mian, resident of village Baga Kusumar P.S. Phulparas, District Madhubani
- 43(a) Md. Mustafa Mian, son of Rarmood Mian
- 43(b) Md. Martasa Mian, son of Rarmood Mian, resident of village Baga Kusumar, P.S. – Phulparas, District – Madhubani
44. Hadisia daughter of late Jhapsu Mian
- 45(A)(i) Bengali Mian
- 45(A)(ii) Abdul Maziz Mian, both sons of Liyakat Mian
- 45(B) Sakhawati Mian, son of Newati Mian
46. Yunus Mian son of Hanif Mian
- 47 Mohid Mian, son of Dilawar Mian
- 48(a) Akbar, son of Late Matlawi Mian
- 48(b) Bhola son of late Matlawi Mian
- 49(a) Habib Mian son of Late Mohid Mian
- 49(b) Sadique Mian, son of Late Mohid Mian
- 50(i) Mustaque Mian, son of Late Ramjani Mian
- 50(ii) Anzus Mian, son of Late Ramjani Mian
- 50(iii) Mokabil Mian, son of Late Ramjani Mian
- 50(iv) Jamil Mian, son of late Ramjani Mian
51. Ulfat Mian, son of Feku Mian
- 52 (i) Gulzar Mian, son of Ishak Mian
- 52(ii) Nathuni Mian, son of Ishak Mian
- 53(i) Akbar Mian, son of Fakruddin Mian
- 53(ii) Usman Mian, son of Fakruddin Mian
54. Bhadai Mian, son of Madhai Mian
55. Khalil Mian, son of Alijaan

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56. Diljan Mian son of Fakruddin Mian
57. Faruque Mian, son of Razak Mian, deceased.
58. Sabbir Mian, son of Ghoghar Mian
59. Dhurkheli Mian, son of Late Sahwood Mian
60. Kaushik Mian son of Late Sahwood Mian
61. Sadique Mian, son of Juri Mian, deceased.
62. Ishaque Mian, son of Juri Mian, deceased.
63. Idrish Mian, son of Manir Mian
64. Manabal Mian, son of Manir Mian
65. Ashwani Mian, son of Manir Mian
66. Ishwan Mian, son of Bahadur Mian
67. Bika Mian, son of Bahadur Mian
68. Basir Mian, son of Sabdul Mian
69. Ansarul Mian, son of Sabdul Mian
70. Fakruddin Mian, son of Sabdul Mian
71. Salfat Mian, son of Bitai Mian.
72. Md. Kaijum Mian, son of Sakhawat Mian
73. Taiyab Mian, son of Dukhan Mian
74. Tahir Mian, son of Dukhan Mian
75. Chhotku Mian son of Dukhan Mian
76. Dorhia Mian, son of Kailu Mian
77. Chhutamru Mian, son of Kailu Mian
78. Isul Mian, son of Kailu Mian
79. Nathuni Mian, son of Kailu Mian
80. Karmath Mian son of Faudar Mian
81. Malabux Mian, son of Late Thakai Mian
82. Sadrul Mian
83. Badrul Mian, both sons of Late Nahib Mian. All residents of villages Baghakusmar Pargana Jabdi, P.S. Laukaha, District Madhubani
84. Surya Narain Mandal, son of Janak Lal Mandal resident of village Gatipatti Pergana, Alapur, P.S. Phulparas, District Madhubani
.... (Defendants 2nd party).... Respondents 3rd party
85. Godamia Devi widow of Ram Kishun Sah, village + P.O. – Balua, P.S. Phulparas, District Madhubani
86. Dulari Devi D/o Ram Kishun Sah. Village Barhi, P.O. – Kalapatli, P.S. – Phulparas, District Madhubani
87. Sita Devi, Daughter of Bajri Sah. Resident of village + P.O. – Darsen Dumra, P.S. – Aghra Tharhi, Madhubani
88. Malti Devi, D/o Bajri Sah, village+P.O. – Ladania, P.S. Lokhi, District Madhubani
89. Godamia Devi, wife of Ram Kishun Sah, village+P.O. Balua Gobrahi, P.S. Phulparas, District Madhubani
90. Dulari Devi wife of Jagdish Sah, Village Barhi,P.O. – Kallapatti, P.S. Phulparas, District Madhubani
91. Bhutti Devi, D/o Late Babuji Sah Village+P.O.- Balua Gobrahi, P.S. Phulparas, District Madhubani
92. Sita Devi, D/o Bajri Sah
93. Malti Devi D/o Bajri Sah ... (Appellants) Respondent 4th party

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Appearance :

For the Appellant/s : Mr. Ram Bilash Mahto, Advocate

For the Respondent/s : Mr. Manoj Kumar Singh, Advocate
Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Sanjay Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 28-04-2015

Heard learned counsel for the appellants and counsel for the Respondent nos. 2 to 4.

2. Present appeal has been filed assailing the order dated 10.08.2000 passed by learned Single Judge of this Court dismissing the restoration application, bearing MJC No. 1514 of 2000 and thereby refusing to restore Civil Review No. 260 of 1999 which was dismissed for non-compliance of the peremptory order dated 19.04.2000.

3. It appears, First Appeal No. 524 of 1975 was filed assailing the judgment and preliminary decree dated 26.07.1975 passed in Partition Suit No. 46 of 1965/ 14 of 1973. Aforesaid first appeal abated under order dated 12.08.1999 for non-substitution of the heirs of deceased Appellant no. 23. In the aforesaid judgment and decree under appeal dated 26.07.1975, the heirs of Khublal Sah, plaintiff and Genalal Sah defendant were given half share each in the suit property. The appeal having abated under order dated 12.08.1999 for non-substitution of the heirs of deceased Appellant no.23, civil

review filed praying, inter alia, to review order dated 12.08.1999 stood dismissed for non-compliance of the peremptory order dated 19.04.2000. The restoration application was also dismissed under order dated 10.08.2000 as appeal having abated no useful purpose would have been served by allowing the restoration application.

4. Under judgment and decree passed in the aforesaid partition suit, parties having been given half share each in the suit properties, as such, no useful purpose will be served by allowing this appeal, which is dismissed permitting the heirs of defendant Genalal Sah along with the purchasers of both the sides to file appropriate objection in the final decree proceeding, if pending.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

Arjun/-

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