

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.505 of 2014

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1. Kumar Vijayaditya @ Arbind Kumar, son of Sri Vikramaditya Paswan,
Resident of village- Rani Sarai, P.O. & P.S. Bakhtiyarpur, District-Patna,
At present residing at Flat No. 403, Triveni Niwas, R.K. Avenue Road,
Rajendra Nagar, P.S.- Kadamkuan, District/Town- Patna.

.... Appellant/s

Versus

1. Vikramaditya Paswan, son of Late Basudeo Paswan.
2. Kumar Vimladitya @ Dimple, son of Vikramaditya Paswan,
3. Kumar Vivekaditya @ Kamal, Minor son of Vikramaditya Paswan,
4. Raj Laxmi @ Komal, Minor daughter of Vikramaditya Paswan, All
Resident of village - Rani Sarai, P.O. & P.S. - Bakhtiyarpur, District- Patna.
At Present Residing at "Komal Shree & Kamal Guest House ", P.O.-
Dhelwa, P.S. - Ram Krishana Nagar, district/Town - patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate.

For the Respondent/s : Mr. Ajit Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

8 30-10-2015 Heard learned counsel for the appellant and learned
counsel for the respondents.

In the present appeal the appellant is challenging the
order dated 3.4.2014 passed by Sub-Judge VIII, Patna in
Title Partition Suit No.393 of 2012 by which application
filed under Order 39 Rules 1 and 2 read with Section 151 of
the Code of Civil Procedure has been rejected.

There is delay of 45 days in filing the present appeal.
Looking to the facts and circumstances mentioned in the
limitation petition the delay in filing the present appeal is

hereby condoned.

The appellant is the son of respondent no.1. Respondent no.1 has entered into two marriages. Present appellant is from first wife and he filed a partition suit with respect to different properties mentioned in Schedule I of the plaint. The court below has refused to grant injunction and recorded that the appellant has no prima facie case as he could not make out the property mentioned in Schedule I is joint family property.

Learned counsel for the appellant submits that there are certain lands which are in joint family property situated in the Village and ignoring that aspect of the matter the court below should not have refused to grant injunction with respect to the joint family property.

Learned counsel for the respondent has disputed the claim of the appellant and submitted that all properties are acquired by him from his personal earning though certain property was purchased by his father. For the acquired money provided by him and as such property of village is self acquired property.

Having considered the rival contentions of the parties, this Court is of the view that during pendency of the suit it

will be in the ends of justice in between the parties that the joint family property situated in Village should not be any way disturb nor any charge will be created over that property.

Both the parties have undertaken to co-operate the proceeding at the court below. In view of such submission the court below is directed to dispose of the matter itself within shortest period preferably within a period of one year from the date of receipt/production of a copy of this order.

With the aforesaid observation this appeal is disposed of.

However, in case of dire need, respondent no.1 will have liberty to approach the court below to grant him liberty to sale certain property to the extent of his need. Before granting leave, court below will make necessary enquiry, only then, would grant the permission.

Vinay/-

(Shivaji Pandey, J)

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