

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19692 of 2010

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Shambhoo Prasad Singh, son of late Devendra Prasad Singh, resident of village Jhanjharpur, P.S.- Jhanjharpur, District-Madhubani.

.... Petitioner/s

Versus

1. Shushil Prasad Singh, son of late Devendra Narain Singh, resident of village Jhanjharpur, P.S. and Anchal- Jhanjharpur, District-Madhubani
 2. Smt. Rama Devi, widow of Devendra Narain Singh
 3. Kailash Prasad Singh
 4. Prabhash Prasad Singh
- Both sons of late Devendra Narain Singh,
All residents of village Jhanjharpur, P.S.- Jhanjharpur, District-Madhubani.
5. Moti Devi, wife of Satyendra Narain Singh, resident of village Dhabauli, P.S.- Sonbarsa, P.O.- Dhabouli, District- Saharsa.
 6. Neetu @ Dai Jee, widow of late Ganik Prasad, resident of village + P.O. + P.S.- Jhanjharpur, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ASHOK KUMAR PRASAD

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 06-08-2015

Heard the Counsels for the petitioner and the respondents.

The petitioner is plaintiff of Partition Suit No. 16 of 2008 seeking partition in respect of a land on which, according to the plaintiff, brick kiln was running. In the said suit, the petitioner filed an application under Order XL Rule 1A of the Code of Civil Procedure (for short 'the Code') for appointment of Receiver. The Trial Court by the impugned order dated 14.7.2010 rejected the said application setting out reasons therefor. The Court took notice that on amongst others the fact that the business of brick kiln has been closed down by

the party who was operating the same.

Considering the *inter se* claim and the fact that they had right, title and interest until partition is granted, the application was rejected. Aggrieved thereby, the present writ petition has been filed.

Counsel for the defendants-respondents has raised a preliminary objection regarding maintainability of the writ application. It has been submitted that the said order is appealable in terms of provisions contained in Order XLIII Rule 1(s) of the Code.

If the Code itself provides a remedy to the party aggrieved then, in my view, writ petition cannot be entertained against such order. The petitioner, if so advised, may assail the order before the appropriate forum in accordance with law.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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