

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.452 of 2013

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Shanti Devi wife of Binod Kumar and d/o Late Hanuman Prasad @
Hanumat Prasad, R/o village Mamarkha P.S.Malahi District East
Champaran.

.... Appellant/s

Versus

1. Arvind Kumar Srivastava.
2. Pankaj Kumar, Both sons of Late Jawala Prasad, Resident of Raxaul
District East Champaran.
3. Akhileshwar Pd. Sinha son of Bidyanand Pd.
4. Ankur Priya son of Akhileshwar Pd. Sinha.
5. Ankita Kumari d/o Akhileshwar Pd. Sinha.
All residents of Mohalla Koiria Tola Raxaul, behind Ward No. 25 Raxaul
Municipality, PO. And P.S. Raxaul district East Champaran.
6. Rajni Srivastava wife of Ashit Krishna, R/o Narayani City, Apartment
Brahm Asthan P.O. Patna P.S. Sheikhpura district Patna.
7. Savitri Devi wife of Late Rajeshwar Pd.
8. Ajay Kumar.
9. Prem Kumar Srivastava.
10. Ajeet Kumar. Sons of Late Rajeshwar Pd.
All R/o Raxaul Ward No.13, P.O. and P.S. Raxaul, District East
Champaran.
11. Shakuntala Verma wife of Ambarish Verma c/o Late P.P. Verma, R/o
Mohalla Agarwa Lala Tola, P.O. and P.S. Motihari District East
Champaran.
12. Sanjna Devi.
13. Anjana Devi.
14. Neelam Devi, all daughters of Late Rajeshwar Pd.
R/o Raxaul Ward No.13, P.O. and P.S. Raxaul district East Champaran.
15. Abhinandan Kumar s/o Bipin Bihari Prasad, R/o Raxaul Mahabir Nagar
Road Ward No.19, P.O. and P.S. Raxaul district East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.Hassan, Adv.
For the Respondent/s : Mr. Rajendra Narayan, Sr. Adv.
Mr. Lallan Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

13 24-09-2015

Heard counsel for the appellant and the respondents.

In this appeal, the appellant has challenged the order

dated 2nd April 2013 passed in Partition Suit No. 907 of 2012 whereby and whereunder the application filed for interim injunction under Order 39 Rule 1 and 2 CPC has been rejected.

Except some dispute on genealogy, as per the claim of the appellant, she is step sister of Jwala Prasad and Rajeshwar Prasad whereas respondents are claiming that the appellant is their own sister. As per the G.T. the common ancestor of both the sides was Sukhari Lal having one son Saryug Lal and Saryug Lal had one son Hanimat Prasad @ Hanumat Prasad. As per claim of the appellant, Hanumat Prasad had two wives, namely, Adhikari Devi and Mukhi Devi. Mukhi Devi had two sons, namely, Jwala Prasad and Rajeshwar Prasad. Adhikari Devi had one daughter namely, Shanti, the appellant.

According to the appellant, no partition has taken place in the family but the respondents are alienating the valuable property illegally and also they are contemplating to alienate certain properties. It has further been stated that whatever knowledge she had, she has given details of the lands in Schedule-II as and when she will gather more information about other property, proper amendment application will be filed. The cause of filing the interim injunction is the intention and contemplation to sell valuable property to the persons having muscle power, the

moment they would come in possession of the land, it will be very difficult for restitution of their land.

Counsel for the respondents submits that the appellant is own sister of Jwala Prasad and Rajeshwar Prasad, already a partition has taken place in the family and for effective remembrance a *Yaddast Batwara* was prepared in the year 1984, which bears signature of Jwala Prasad, Rajeshwar Prasad, Adhikari Devi and Shanti Devi the appellant Schedule-I property has gone in favour of Jwala Prasad, Rajeshwar Prasad and Adhikari Devi whereas Schedule-II property has gone in favour of Shanti Devi, the appellant and the *Yaddast Batwara* has been witnessed by number of persons and their signatures are on the said *Yaddast Batwara* and in terms of that *Yaddast Batwara* parties have come in possession of their respective lands and time to time parties are alienating the property according to their shares.

Counsel for the appellant submits that altogether 19 bigha, 3 katha and 8 dhurs is the total land. Substantial portion of the land has been taken by one side and she has been left with lesser area of land whereas she is entitled to at least 4 bigha 15 katha but has been given 2 bigha 5 katha of land which itself shows that the partition has not taken place by metes and bounds. It has further been submitted that in the *Yaddast Batwara* Police



Station Malahi has been written whereas this P.S. came into existence in the year 1989 whereas in the *Yaddast Batwara* while giving details of the address, P.S. Malahi also challenged the signature of the appellant over the *Yaddast Batwara*, claimed that it is a photo stat, if its original will be placed before the Court, the difference in signatures would be apparent. He also submitted that two plots bearing plot Nos. 1487 and 1838 of Khata No. 149 is the subject matter of suit, have not been mentioned in the *Yaddast Batwara*. He further submitted that as per *Yaddast Batwara* plot no. 1806 was allotted to the appellant but it is the respondent side who has alienated it contradicts their stand.

When the counsel for the appellant has raised that it is not her signature but it is a manipulated and fabricated signature this Court directed the counsel for the respondents to produce the original *Yaddast Batwara* which has been placed before this Court and this Court has made comparison with the signature in the *Yaddast Batwara* with the signature on the Vakalatnama filed in the present case by Shanti Devi. It appears by and large it cannot be said there is no resemblance between the two but this observation should not be taken into consideration by the court below while deciding the case finally.

In view of production of that document it appears

that prima facie there was partition in the family and the share has been recorded proper manner but that *Yaddast Batwara* prima facie shows her signature. In such view of the matter, the contention of the appellant that there was no partition in the family earlier prima facie is not tenable and sustainable.

In view of the aforesaid recording of fact, this Court feels that the appellant has failed to make out a prima facie case in her favour and, as such, the order passed by the court below cannot be said to be bad in any manner and not sustainable in law. However it is made clear that any observation recorded by this Court will not cause any prejudice to any of the parties and the trial court will decide the case on its own merit. Any person who has alienated the property, will be subject to final decision in the matter.

With the observation/direction this appeal is dismissed.

(Shivaji Pandey, J)

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