

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17085 of 2012

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YUGLAL RAI SON OF LATE BIPAT BHANJAN RAI RESIDENT OF
VILLAGE - CHAINOUTA JADUA, P.O. - HAJIPUR , P.S. - HAJIPUR
TOWN, DISTRICT - VAISHALI (BIHAR).

.... PETITIONER/S

VERSUS

1. PARMANAND RAI SON OF LATE ANANDI RAI RESIDENT OF
VILLAGE - CHAINOUTA JADUA, P.O. - HAJIPUR , P.S. -
HAJIPUR TOWN, DISTRICT - VAISHALI (BIHAR)
2. JINIS RAI SON OF LATE ANANDI RAI
3. RAMANAND RAI SON OF LATE ANANDI RAI
BOTH RESIDENT OF VILLAGE - CHAINOUTA JADUA, P.O. -
HAJIPUR , P.S. - HAJIPUR TOWN, DISTRICT - VAISHALI
(BIHAR).

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar Verma, Adv.
Mr. Bijay Bihari Sinha, Adv.

For the Respondent/s : Mr. Dronacharye, Adv.
Mr. Ranjit Kumar, Adv.
Mr. Sunil Kumar, Adv.

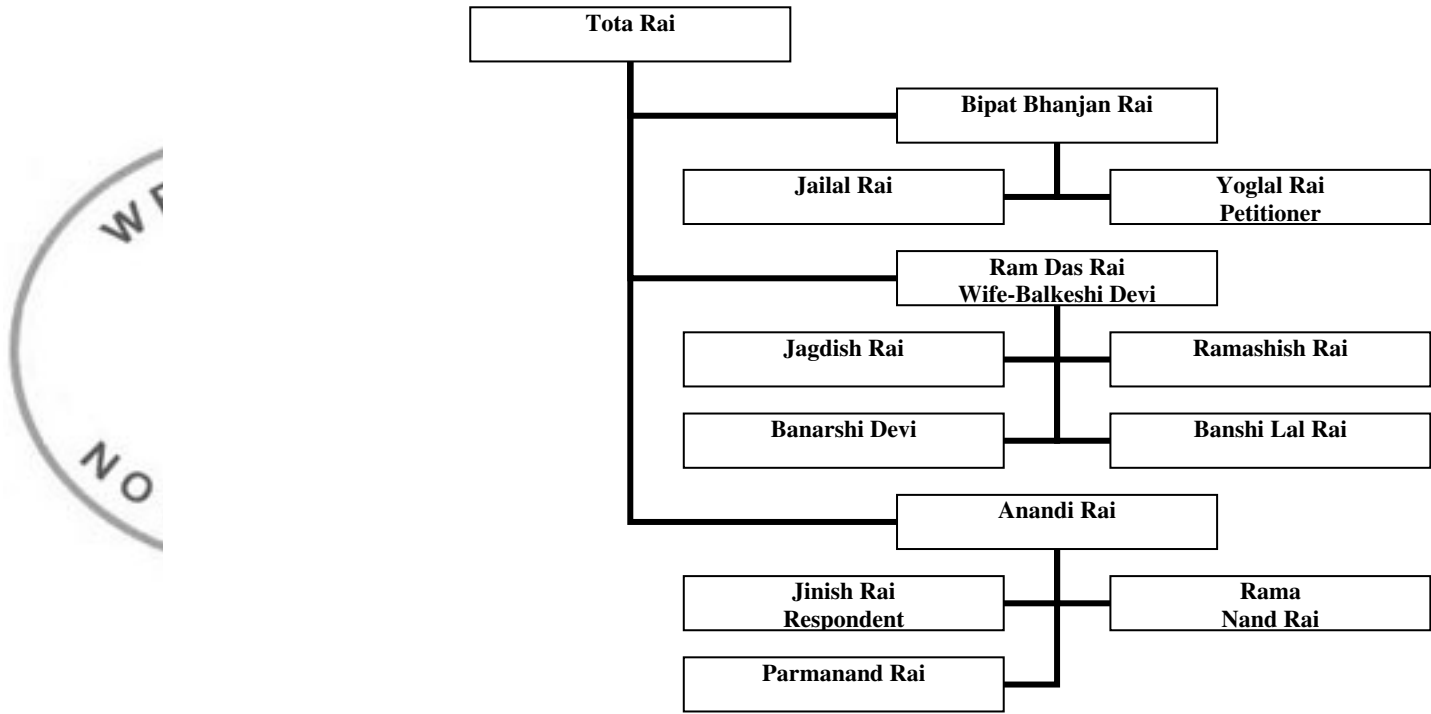
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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 16-12-2015 Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

Petitioner has challenged an order as well as award
dated 16.11.2011 passed by Lok Adalat, Vaishali at Hajipur in
Pre-litigation Case No.309 of 2011, Parmanand Rai Versus Jinis
Rai and others whereby and whereunder effected partition with
respect to the properties having so detailed amongst the parties
who are non-else than full brothers on the basis of compromise
having effected amongst the parties. For better appreciation, a
genealogical table is furnishing as is evident from respective

pleadings.



It has been submitted on behalf of petitioner that malafidely, with ulterior motive in order to grab the self-acquisition by his father Bipat Bhanjan Rai, respondents who are sons of Anandi Rai, hatched conspiracy whereunder approached before Lok Adalat, filed a petition under Pre-litigation banner asking for partition of only those lands having self acquisition of father of petitioner and then, met with compromise whereupon impugned award has been passed. It has also been submitted that neither petitioner nor his another full brother Jai Lal Rai nor the siblings of other coparcener Ram Das Rai have been made party and on account thereof, they were not at all in a position to perceive the fraudulent act of respondents wherein they succeeded and got the award impugned. Furthermore, the learned counsel for



the petitioner referred the direction of this Court having in LPA No.1923 of 2009 (Nawal Kishore Prasad Singh & Ors. Vs. State of Bihar & Ors.), wherein after setting aside the Pre-litigation award, it has been directed “A direction is issued to all Lok Adalats not to entertain the property disputes or the disputes involving contentious issues in Lok Adalat and not to record compromise in respect of such disputes, especially the property disputes. Violation of this direction will be treated as contempt of this Court.”

It has further been submitted that in spite of having such kind of direction to the Lok Adalat is still found engaged in such kind of activity by way of entertaining petition and on account of which, the interest of, at least a coparcener or an absolute owner is found at stake and is further, jeopardized. So submitted that the impugned award passed by the Lok Adalat, Vaishali at Hajipur is fit to be set aside.

Per contra it has been submitted on behalf of respondents that instant petition is not maintainable in the background of the fact that neither the full brother of petitioner, mother of petitioner have been impleaded as a party nor there happens to be presence of another coparcener Ram Das. Therefore, there happens to be non-joinder of necessary party whereupon instant petition is found defective one.

It has further been submitted that from the relevant



annexures enclosed with the counter affidavit (Annexure-A, Annexure-B), which happens to be a format through which respondents got loan, it is apparent that presence of sale deed in name of father of petitioner is found admitted and further, there happens to be specific disclosure relating to oral partition having effected in the family by metes and bound whereunder the lands under dispute stood allotted to the share of Anandi, the father of respondents and on account thereof, respondents were legally entitled for a partition and the simple, safest procedure available before them was to approach before the Lok Adalat under pre-litigation heading which they did and obtained the award on the basis of compromise. As such, neither there happens to be fraud nor the petitioner has got any concern with the land under dispute whereupon, instant petition has got no merit and is fit to be dismissed.

Heard both sides. Perused the record.

There happens to be no controversy with regard to status of the the disputed land having purchased in the name of father of petitioner. From Annexure-A, format, relating to which it has been stated by the learned counsel for the petitioner that he could not got loan through the aforesaid application and on account thereof, another petition was filed which happens to be Annexure-B wherefrom it is apparent that name of father of petitioner along with others stood as mortgager. Not only this,



father of petitioner had endorsed his signature and further narrated that he is executed the deed of mortgage. Though there happens to be some sort of description under Annexure-A relating to oral partition having effected in the family and further, having the land allotted to the share of Anandi which is found completely nullified by Annexure-B whereunder all the three have bounded themselves, that means to say, the earlier story of partition as pleaded under Annexure-A has completely been washed away under Annexure-B and on account thereof, the story of oral partition and allotment of land in favour of father of respondent has completely been fore done by the own conduct of respondents.

Considering the manner whereunder proceedings of the Lok Adalat is being conducted and further perceiving that by such activities the legal rights of the person are being ceased, on account thereof, times without number whenever there happens to be adjudication over award passed by the Lok Adalat more particularly relating to partition as well as property dispute, this Court had give a sermon to the Lok Adalat not to entertain such dispute because of the fact that the summary procedure prescribed therefor will ultimately cost a lot axing upon the interest of the party as well as arising multiplicity of litigation. Rightly, in LPA No.1923 of 2009 there happens to be specific direction of this Court not to entertain the petition at pre-litigation stage any matter relating to property dispute and further opined that violation of the



aforesaid direction would be treated as contempt of court which suggest that how deep the court has gone and perceived illegality, irregularity and further its adverse impact which, at least the Lok Adalat should have adhered to. The present litigation is of the year 2011. In the aforesaid facts and circumstances, it could be presumed that the order passed under LPA No.1923 of 2009 would have been before the learned Lok Adalat and on account thereof, might have refused to entertain the petition. That being so, entertainment of the petition and passing of award happens to be in utter violation of direction of the court and on account thereof, would not survive. Not only this, the manner whereunder the Lok Adalat proceeded and concluded through the order impugned also did not justify its sustainability as, by way of collusiveness, of the party, prevented with the actual affair as well as deprived of the other co-sharers to defend their right which, the Lok Adalat was not competent to decide. That being so, the impugned award is set aside. Petition is allowed.

However, as held in CWJC No.14426 of 2009 vide order dated 06.11.2009 the parties are directed to have their grievances duly redressed under proper framed suit.

(Aditya Kumar Trivedi, J.)

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