

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6982 of 2011

=====

1. Md. Sohrab S/O Late Md. Sulaiman R/O Mohalla Qazi Mohmadpur, Known As Mohalla -Islampur, P.S.-Town, Distt.-Muzaffarpur.

.... Petitioner/s

Versus

1. Razia Khatoon W/O Abdul Wahab R/O Mohalla Qazi Mohammadpur, Known As Mohalla -Islampur, P.S., Town, Distt.-Muzaffarpur.
2. Abdus Salam S/O Md. Sulaiman R/O Mohalla Qazi Mohammadpur, Known As Mohalla -Islampur, P.S., Town, Distt.-Muzaffarpur.
3. Abdul Wahab S/O Md. Sulaiman R/O Mohalla Qazi Mohammadpur, Known As Mohalla Islampur, P.S., Town, Distt.-Muzaffarpur.
4. Bibi Azizan W/O Late Md. Sulaiman R/O Mohalla Qazi Mohammadpur, Known As Mohalla Islampur, P.S., Town, Distt.-Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Shamimul Hoda

For the Respondent/s : Mr. S.M. Iqbal Hasan Rahman

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 10-09-2015

Heard the Counsels for the petitioner and the respondents.

Defendant no. 1 of Partition Suit No. 249 of 2004 filed by the plaintiff-respondent for partition in the Trial Court filed application for staying the proceedings of the suit as earlier to this, the defendant had filed Title Suit bearing T.S. No. 543 of 2003 for declaration of title and recovery of possession. It was stated that parties are same inasmuch as the part of the suit land involved in the present suit being Title Suit No. 249 of 2004 is the same. The Court below under order dated 13.1.2011 rejected the said application on the ground that such application was filed at a much belated stage when the plaintiff had already examined six witnesses. The Court also found that defendant

no. 2 of the suit was not party in Title Suit No. 543 of 2003. The nature of the suits was different and distinct.

Learned counsel for the petitioner has submitted that on filing written statement in Title Suit No. 543 of 2003, the husband of the defendant Razia Khatoon has also been made defendant no. 3 in Title Suit No. 543 of 2003.

The counsel for the defendant, on the other hand, has submitted that indisputably only part of the suit land covered by Title Suit No. 249 of 2004 is the subject matter of Title Suit No. 543 of 2003.

Both the parties in both the suits claim title/interest in the subject land being the heirs/descendants or donees of Bibi Azizan. Title Suit No. 543 of 2003 filed by the defendant is only in respect of the claim on the part of the land which was acquired by Bibi Azizan and subsequently gifted to the different persons who are parties to the suit. The reasons assigned by the Trial Court cannot be found flawed with in order to stay Title Suit No. 249 of 2004.

However, considering the similarity of the lis as also the fact that now the parties to the suit are same although the two suits have been filed for different reliefs, it appears to be just in the interest of justice that both the suits be made analogous and proceed altogether. This will also provide an opportunity to the Trial Court to appreciate the case of the parties and effectively adjudicate thereon. In fact, on

this point, there is agreement between the parties.

Consequently, without interfering with the order dated 13.1.2011 passed by the Trial Court in Partition Suit No. 249 of 2004, it is directed that both the suits shall now be made cognates and placed for consideration before the Court where Partition Suit No. 249 of 2004 is currently pending consideration. It has been informed at Bar that Title Suit No. 249 of 2004 is currently pending in the Court of learned Sub-Judge-IV, Muzaffarpur.

I order accordingly.

Both the parties have undertaken that they will take needful steps for early disposal of the suit(s) and will avoid taking unnecessary adjournments.

Pankaj/-

(Kishore Kumar Mandal, J)

U		T	
---	--	---	--