

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2359 of 2011

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1. Bibi Amela Khatoon D/O Late Kalimuddin Wife Of Late Ghyasuddin Resident Of Village- Samesar,Po-Samesar Hat,Ps-Bahadurganj,Distt-Kishanganj.
 2. Zahoor Alam Son Of Late Ghyasuddin Resident Of Village-Samesar,Po-Samesar Hat,Ps-Bahadurganj,Distt-Kishanganj.

.... Petitioner/s

Versus

1. Md.Qaiyum Son Of & Daughter Of Bibi Tahmina Khatoon Resident Of Village-Padampur Tola,Tappu,Po Tarabari Via-Powa Khali,Ps-Garbhandanga,Distt-Kishanganj.
2. (i) Mahrunnisa D/o
(ii) Sartaj Alamn D/o
(iii) Tajallia Begum
(iv) Mali Begum
3. Qamrul Son Of & Daughter Of Bibi Tahmina Khatoon. R/O Village-Padampur Tola,Tappu,Po-Tarabari,Via-Powa Kahali,Ps-Garbhandanga,Distt-Kishanganj.
4. Zohra Begum Son Of & Daughter Of Bibi Tahmina Resident Of Village-Padampur Tola,Tappu,Po Tarabari Via-Powa Khali,Ps-Garbhandanga,Distt-Kishanganj.
5. Md.Gholam Rashool Son Of Late Ghyasuddin Resident Of Village-Samesar,Po-Samesar Hat,Ps-Bahadurganj,Distt-Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MD. NAJMUL HODDA
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 14-08-2015

Heard Mr. Khan in support of the writ petition which has been filed against the order dated 08.02.2010 passed in T.S. No. 04 of 2001 by the learned Sub-Judge II, Kishanganj rejecting the petition dated 04.02.2010 filed by the defendant-petitioners annexing therewith a fresh written statement.

Brief background of the case is that the plaintiff filed



Title Suit No. 59 of 1997 for partition. The defendant of the suit including the writ petitioners appeared thereat and filed written statement(s). Parties were allowed to lead evidence in support of their case. At the stage of final disposal the learned Munsif found that the Court was not competent to adjudicate due to lack of pecuniary jurisdiction. The plaint was returned to the plaintiff for presentation before the Court of competent jurisdiction and the same was done. The case was registered bearing no. T.S No. 4 of 2001 by the Sub-Judge. Both the parties later agreed for disposal of the suit on the basis of pleading on record and evidence adduced in support thereof in the Court of the learned Munsif. They did not agree for de novo trial. A joint petition also filed in this regard on 07.01.2010 which was allowed by the Court on the same date. Under some misconception another petition was filed on 04.02.2010 annexing the written statement of the defendant which was considered and rejected under the impugned orders.

Counsel for the petitioner has rightly pointed out that if the parties had agreed for disposal of the suit on the basis of pleadings of the parties and evidence adduced in support thereof then there was no need of filing a fresh written statement as the written statement filed by the defendant at the initial stage of the suit while pending in the Court of learned Munsif was allowed to remain on the

record inasmuch as the evidence adduced by the parties were also allowed to be considered for speedy disposal of the suit later presented in the Court of the Sub-judge II, Katihar. It has therefore, rightly been submitted that the present application has become irrelevant in view of the order which the Court passed on 07.01.2010 on the joint petition filed by both the parties.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

Prakash/-

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