

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12196 of 2014

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Hridaya Narayan Kumar, Son of Late Mukteshwar Kumar, resident of Mohalla- Ward No. 6, Buxar, Police Station- Buxar, District- Buxar

.... **Petitioner.**

Versus

1. Smt. Jaya Singh, wife of Sri Rama Nand Singh, resident of 6 B/9, Tilak Marg, North Sri Krishna Puri, P.S.- Shri Krishnapuri, District- Patna. As General Power of Attorney of Sri Upendra Kumar, son of Late Jagdish Kumar vide General Power of Attorney holder dated 23.02.2007
2. M/s. Jaya Homes Private Ltd., A company Incorporated under the Company Act, 1956, having its registered office at 6 B/9, Tilak Marg, North Sri Krishna Puri, P.S.- Shri Krishnapuri, District- Patna- 13 through its Directors (i.e. Respondent No. 3 and 4)
3. Prashant Kumar
4. Akshay Kumar Sl. No. 3 and 4 are sons of Sri Rama Nand Singh, resident of 6 B/9, Tilak Marg, North Sri Krishna Puri, P.S.- Shri Krishnapuri, District- Patna-13
5. Sri Prakash Kumar
6. Sri Shailesh Kumar Sl. No. 5 and 6 are sons of Late Mukteshwar Kumar, resident of Mohalla- Ward No. 6, Buxar, Police Station- Buxar, District- Buxar
7. Most. Gita Devi, Wife of Late Kameshwar Kumar, resident of Block No. 7, House No. 137, Rajendra Nagar, Patna
8. Sri Atul Kumar
9. Sri Pratap Kumar Sl. No. 8 and 9 are sons of Late Kameshwar Kumar, resident of Block No. 7, House No. 137, Rajendra Nagar, Patna
10. Sri Nagendra Kumar, Son of Late Mukteshwar Kumar, resident of Infront of Dharikshan Kuari Dharamshala, Buxar
11. Ahinsak Kumar
12. Jayant Kumar Sl. No. 11 and 12 are sons of Sri Nageshwar Kumar, resident of Infront of Dharikshan Kuari Dharamshala, Buxar
13. Sri Upendra Kumar, son of Late Jagdish Kumar
14. Most. Nagina Devi, wife of Late Jagdish Kumar
15. Sri Jugal Kumar
16. Basu Priya Sl. No. 15 and 16 are minor son and daughter of Sri Upendra Kumar U/g of Upendra Kumar father AND well wishers
17. Smt. Hari Priya, Wife of Sri Upendra Kumar, resident of Mohalla- Sri Krishnapuri, Boring Road, Patna at present E-5, Kashmir House Rajaji Marg, New Delhi- 110 011

.... **Respondents.**

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Appearance :

For the Petitioner/s : Mr.Noorul Huda, Adv.
Mr.Anil Kumar Tiwary, Adv.

For the Respondent/s : Mr. Umakant Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

3 17-08-2015

Heard Mr.Noorul Huda, the learned counsel appearing on behalf of the petitioner.

Calling in question the impugned order by which the learned court below has directed the respondents to adduce further evidence in Miscellaneous Case filed under Order 9 Rule 13 C.P.C. and rejected the petition of the petitioner for recall of the order dated 18.01.2014, the present application under Article 227 of the Constitution of India has been filed.

Mr.Huda, the learned counsel appearing for the petitioner has submitted that the petition under Order 9 Rule 13 C.P.C. for setting aside the ex parte decree in a suit for partition has not been filed by the defendant. It has been highlighted that the said petition has been filed by the transferees from the power of attorney holder of the defendant. Learned counsel has propounded by relying upon the provision of Order 9 Rule 13 C.P.C. that it is only the defendant alone who can maintain a petition for setting aside an ex parte decree. It has been further submitted by learned counsel that the claim of the defendant who has applied for setting aside ex parte decree does not extend to the entire property in the suit rather it



is only confined to the part of the property situated in Patna and no claim has been made with regard to the other property situated in other districts. It has been canvassed that the court below should have firstly decided the maintainability of the miscellaneous case and thereafter should have proceeded further for adjudication of the said case.

After considering the materials on record and submissions on behalf of the petitioner, it is manifest that an ex parte decree has been passed in a suit for partition. The petitioner was the plaintiff in the suit. The miscellaneous case under Order 9 Rule 13 C.P.C. has been initiated on the petition filed by the power of attorney holder of the defendant. The interpretation to the provision of Order 9 Rule 13 C.P.C. as posited by the learned counsel for the petitioners cannot be legally accepted as the power of attorney holder of a party to the suit cannot be precluded to act on behalf of the said party and even in view of Section 146 C.P.C. also such proceeding can be maintained by a person who claims through such a party. As such, this Court is of the opinion that the defendant-applicants of the miscellaneous case who are said to be power of attorney holder of the defendant and his transferees and claiming the suit property under the defendant, cannot be said to be strangers to

the decree. The further submission that the person who is seeking to get the ex parte set aside, must be a person who claims the entire property subject matter of the suit is equally devoid of merit. It is not far to seek that in a suit there may be several defendants and the suit can be filed making separate claims against each of the defendants and therefore the submission on behalf of the petitioner that in case of a proceeding for setting aside the ex parte decree, the defendant-applicant must be a person who claims the entire property cannot be sustained. By order dated 12.09.2013 in C.W.J.C.No. 8464/2013, this Court has directed for expeditious disposal of the miscellaneous case.

Considering the entire facts and materials on record, this Court does not find it a fit case for invoking jurisdiction under Article 227 of the Constitution of India. The writ application is accordingly dismissed.

(V. Nath, J)

Nitesh/-

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