

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20205 of 2010

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1. Satya Narayan Prasad S/O Late Baldeo Prasad R/O Vill.- Punaura, P.S. + Distt.- Sitamarhi
 2. Ahilya Prasad W/O Satya Narayan Prasad R/O Vill.- Punaura, P.S. + Distt.- Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Collector, Sitamarhi
2. Vinod Mishra S/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
3. Vijay Mishra S/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
4. Kunkun Mishra S/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
5. Smt. Krishna Kumari Devi W/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
6. Archana Devi D/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
7. Veena Shahi D/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
8. Neelam Shahi D/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi
9. Sabnab Shahi D/O Late Mahanth Raghunath Das Of Mohalla Janki Asthan, Sitamarhi Town, P.O. & P.S., Distt.- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SUNIL KUMAR @ SHARMA

For the Respondent/s : Mr. SATYA DEO KUMAR(SC12)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 07-08-2015

Heard the Counsel for the petitioners.

The petitioners are purchaser of the land from the defendant no.

3 in whose favour the decree was passed. The petitioners claimed purchase from the said defendant under registered sale deed. Their application for intervention in the suit was rejected on the ground that in case decree is passed, the petitioners may apply for allotment of

land as per sale deed. In the final decree proceeding, an application was filed by the petitioners for carving their land under separate takhta as per the sale deed executed by the defendant in whose favour the decree was passed.

It is contended that the same was rejected primarily on the ground that the decree passed by the Trial Court is under challenge before the High Court in First Appeal no. 35 of 2005. Counsel for the petitioner states that said First Appeal has already been dismissed on contest and the S.L.P. filed thereagainst has also been dismissed.

Counsel for the petitioner points out that while dismissing the First Appeal, this Court has taken note of the grievance of the petitioner in paragraph 27 of the judgment which is extracted hereinbelow:-

“27. It is submitted by the parties that some of the properties have been sold during the pendency of the appeal by the appellant. Admittedly, on the death of Mahanth Raghunath Das she has also got share in the property. The purchasers shall be adjusted in the respective share of their vendor.”

Since the application of the petitioners has primarily been rejected on the plea that First Appeal is pending before the High Court, in my view, the petitioners would be entitled to make another application before the Court below for the relief as prayed for in this application in view of the fact that the said First Appeal has been dismissed noticing the aforesaid submission as extracted hereinabove.

If any such application is filed, the Court below shall consider and dispose of the same afresh in accordance with law.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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