

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19462 of 2011

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Ram Udgar Paswan

.... Petitioner/s

Versus

Rajo Paswan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Man Bansh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 02-11-2015 **1.** Heard the learned counsel, Mr. Binod Bariyar, on behalf of the petitioner and the learned counsel Mr. Amresh Kumar Verma, on behalf of the plaintiff-respondent.

2. This application under Article 227 of the Constitution of India has been filed by the defendants petitioner against the order dated 10.08.2011 passed by the learned Sub Judge I, Begusarai in Title Suit No.260 of 2009 whereby the learned Court below directed the defendant petitioner to begin evidence first.

3. It appears that the plaintiff respondent filed aforesaid suit for partition. The defendant filed contesting written statement taking the plea that there had already been partition between the parties in the year 1950. Thereafter, the plaintiff filed application for directing the defendant to begin evidence first in view of the provision as contained in Order 18 Rule 1 CPC. Rejoinder was

filed by the defendant. The Court below by the impugned order directed the defendant to begin evidence first.

4. The learned counsel for the petitioner submitted that since it is the case of the plaintiff who is praying for partition of the property, the right to adduce evidence is on the plaintiff. He relied upon a decision of this. According to the learned counsel, the Court below has wrongly exercised the jurisdiction.

5. On the other hand, the learned counsel appearing on behalf of the respondent submitted that the case relied upon by the learned counsel for the petitioner is not applicable in the present case because in the case relied upon by the petitioner, the property involved was of Mohammedan family where there is no presumption of jointness as is available in Hindu law.

6. From perusal of the order, it appears that the Court below has considered the provision as contained in Order 18 Rule 1 CPC and finding that the defendant has denied a fact on the basis of which the plaintiff is not entitled to any part of the relief, therefore, the defendant has to begin and accordingly directed. So far the decision relied upon by the learned counsel is concerned, it appears that in that case, the partition was between the members of Mohammedan family. However, without going to the above

position, it may be mentioned here that this Court exercised jurisdiction under Article 227 of the Constitution of India.

7. In the case of *Jai Singh and others vs. Municipal Corporation of Delhi and another* 2010 (9) SCC 385, the Hon'ble Supreme Court has held that **'under Article 227 of the Constitution of India, the High Court has the jurisdiction to ensure that all subordinate Courts as well as statutory or quasi-judicial tribunals, exercised the powers vested in them, within the bounds of their authority. It is well to remember the well-known adage that grater power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constrains. It cannot be exercised like a "bull in China shop", to correct all errors of Judgment of a Court, or tribunals, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or flagrant abuse of fundamental principles of law or justice.'**

8. It is also well settled principle of law that the

supervisory jurisdiction is not available to correct mere errors of fact or of law unless a greave injustice or gross failure of justice has occasioned thereby.

9. In the present case, the Court below has merely directed to begin evidence first because of the fact that the defendants denied the fact alleged by the plaintiff that the properties are joint family property and there had already been partition, therefore, in view of Order 18 Rule 1 CPC, the Court below has rightly directed the defendant to begin evidence first. I, therefore, find no merit and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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