

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12680 of 2012

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Lakshmi Devi Wife Of Late Jamun Ram Resident Of Village And P.O.
Damodarpur, P.S. Kanti Munsifi, Muzaffarpur West, District Muzaffarpur

.... Petitioner/s

Versus

1. Most. Basanti Devi Wife Of Late Janak Paswan
2. Ashok Paswan
3. Umesh Paswan
4. Dinesh Paswan
5. Rakesh Paswan
6. Naresh Paswan
7. Rabindra Paswan
8. Birendra Paswan Son Of Late Janak Paswan
All Residents Of Village And P.O. Damodarpur P.S. Kanti Munsifi
Muzaffarpur, District Muzaffarpur.
9. Smt. Sahti Devi Wife Of Late Kishuni Ram
10. Smt. Surji Devi Wife Of Sri Arjun Paswan
Both Residents Of Village And P.O. Damodarpur P.S. Kanti Munsifi
Muzaffarpur West, District Muzaffarpur.
11. Sant Kumar Son Of Sri Jang Bahadur Thakur Resident Of New Colony
Brahmpura, P.O. And P.S. Brahmpura, District Muzaffarpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Abinash Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 07-12-2015 Heard learned counsel for the petitioner as well as
respondents.

There happens to be no controversy that Vishuni
Ram, father of Janak Paswan plaintiff along with his Bhabhi, Sahti
Devi, aunt of plaintiff Janak Paswan, both co-sharer have executed
sale deed in favour of Jamun Ram husband of Laxmi Devi,
petitioner on 06.12.1976 and on the basis thereof, Jamun came
over the land. After death of Jamun, his wife Laxmi Devi has

inherited the property whose existence is on the spot.

Later on, while the aforesaid two co-sharers fought for partition of the remaining area of survey plot no.1498 and for that instituted Partition Suit No.476 of 2006 and as during midst of the same Laxmi Devi, petitioner had executed sale deed in favour of one Sant Kumar, on account thereof, the aforesaid sale deed has been brought up in question and for that advanced plea of preemption by way of amendment which has been allowed by the learned lower court by the order impugned, hence this petition.

The document of 1976 is an admitted document executed by both the coparceners. Possession is also there which, on account of consumption of twelve years has become perfect. Further, had there been any grievances, a suit within a period of three years, should have been brought up to challenge the document of the year 1976 which now again found barred by limitation. Laxmi Devi, stranger to the family has had her presence and that being so neither Section 22 of the Hindu Succession Act nor Section 4 of the Partition Act is found applicable in the background of the fact that it happens to be second transfer. Application of 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1971 is not within the domain of civil court, as different court has been identified for that purpose.

Consequent thereupon, the order impugned happens
to be bad and is accordingly set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

