

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.851 of 2016

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Prithvi Nath Thakur S/o Late Jagdev Thakur and Late Purna Kuer R/o Sisai,
P.S.- Janta Bazar, District- Saran (Chapra).

.... Petitioner

Versus

1. Mahanth Thakur @ Mahanth Prasad Singh
2. Bijali Thakur
3. Kameshwar Thakur

All are S/o Late Jamadar Thakur R/o Village- Sisai, P.s.- Janta Bazar,
District- Saran (Chapra).

.... Respondents

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Appearance:

For the Appellant/s : Mr. Ashok Kumar Dubey, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 17-10-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 11.04.2016
passed by Sub Judge-IX, Saran at Chapra in Title Suite No. 145
of 2014, whereby the Court below rejected the application filed
by the petitioner for being added as party in the aforesaid Suit.

It appears that the aforesaid Suit was filed by the
plaintiffs-respondents for partition of the suit property. The
plaintiff is Mahanth Thakur, whereas the Defendants are brothers
of the plaintiff.

The petitioner filed the application under Order 1
Rule 10 C.P.C. for being added as a party on the ground that he is
the adopted son of Purna Kuer, wife of Late Jagdev Thakur. The

Court below by the impugned order rejected the said application on the ground that no registered documents have been produced.

The learned counsel for the petitioner submitted that being the adopted son of Jagdev Thakur and Purna Kuer, the petitioner has got half share in the Suit property. His father is the plaintiff Mahanth Thakur, but intentionally he did not make the petitioner as party in the partition suit and has filed the suit claiming 1/3rd share of the suit property.

From perusal of the impugned order, it appears that the plaintiff and his brothers who are defendants have already compromised the suit. Admittedly, the suit is simple suit for partition. The question to make parties involved in the partition is whether the plaintiff is entitled for 1/3rd share or not and in fact they have compromised their dispute.

So far the question raised by the petitioner is concerned, that is not at all involved in the partition suit. This dispute will be between the petitioner and the parties of the partition suit i.e. plaintiff and defendants together.

Hon'ble Supreme Court in the case of **Kasturi v. Iyyamperumal**, (2005) 6 SCC 733 has held that "from a plain reading of expression "all the questions involved in the Suit" used in Order 1 Rule 10(2) CPC it is abundantly clear that the legislature clearly meant that only the controversies raised as

between the parties to the litigation must be gone into, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiffs or the defendants inter se or questions between the parties to the suit and a third party.”

Now therefore, in view of this settled proposition of law, the question which is being raised by the petitioner is between the parties to the suit in one side and this petitioner who is stranger to the suit i.e. third party in the other side. Therefore, this dispute cannot be decided in this simple suit for partition. In other words, for deciding the suit for partition, regarding the shares of the parties or entitlement of share, the presence of this petitioner is not at all necessary and, therefore, he is not a necessary party to the Suit. If at all he has got interest in the property, he is required to get himself declared as adopted son and, thereafter, he may claim and for that he is at liberty to institute a separate suit. So far the present application is concerned, it has got no merit. Accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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