

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.984 of 2016

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1. Lakshmi Devi wife of Narendra Singh Daughter of Late Ram Dular Singh Resident of Village-Akhalash Pur P.S. Bhabhua District-Kaimur (Bhabhua) at Present Village- Mokari P.S. Bhabua Diostrict-Kaimur

.... Plaintiff-petitioner

Versus

1. Sri Kant Singh son of Late Bindeshwari Singh
2. Ravi Kant Patel Minor
3. Nawal Kumar Patel minor both 2 and 3 are son of Sri Kant Singh under the Guardianship of their Father Namely Sri Kant Singh
All are resident of Village- Akhalas pur P.S. Bhabhua District- Kaimur
.....Defedants-Respondent 1st Set

4. Most Sangita Kunwar wife of Ram Dular Singh
5. Vishnu Patel minor son of Late Ram Dular Singh Under the Guardianship of her mother namely Most Sangita Kuer
Both are resident of village-Akhalas pur P.S. Bhabhua District- Kaimur (Bhabhua)

.... Defendants 2nd Set-Respondents

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Appearance :

For the Appellant/s : Mr. Arabind Nath Pandey, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 23-11-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 16.08.2016, passed by the learned Sub-Judge-VIII, Bhabhua, Kaimur in Title Suit No. 582 of 2012, whereby the learned court below allowed the amendment application filed by the defendant/respondent.

Learned counsel for the petitioner submitted that in the original written statement the defendant admitted the fact that the plaintiff has got 1/12th share in the suit property, but by way of amendment now that admission is

sought to be withdrawn by saying that the plaintiff has got no share in the suit property.

Perused the impugned order. It appears that this Partition Suit has been filed by the petitioner claiming $1/4^{\text{th}}$ share in the suit property. Originally, the written statement was filed saying that the petitioner has got $1/12^{\text{th}}$ share in the property. However, by amendment the defendant no. 4 amended the written statement to the effect that Will had already been executed by the father of the plaintiff in favour of son of second wife and, therefore, the plaintiff has got no share in the property because Will has been probated in the year 2002.

In view of the above fact, the question is whether the plaintiff will be entitled to a share according to law or not. This share of the plaintiff will not be depending either on the statement or admission of the defendant in the pleading. If the plaintiff had share in the suit property, she will get the said share, whether it is $1/12^{\text{th}}$ or no share. Therefore, there is no question of withdrawal of admission arises. Even, if it is said that the defendant has admitted the share of the plaintiff to the extent of $1/12^{\text{th}}$ share in the property by mere admission in the written statement, the plaintiff will not be entitled to any share in the property.

Thus, in my opinion, it is not at all withdrawn of the admission by the defendant. Thus, I find no

reason to interfere in the matter.

Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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