

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10487 of 2013

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1. Gholam Rasool Khan Son Of Late Waris Ali Khan Resident Of Village -
Tipoo, P.O. - Tarwan, Police Station - Wazirganj, District - Gaya
..... Petitioner/s

Versus

1. Bibi Zainab Khatoon @ Totri Wife Of Rajju Khan @ Kailu Khan And
D/O Late Waris Ali Khan Resident Of Village - Tipoo, Police Station -
Wazirganj, District - Gaya At Present Resident Of Village - Moyari Tola,
Drabchak, Police Station - Fatehpur, P.O. - Tarwan, District - Gaya
2. Imaman Khan Son Of Late Nathey Khan Resident Of Village - Tipoo,
P.O. - Tarwan, Police Station - Wazirganj, District - Gaya
3. Hajra Khatoon Wife Of Idris Khan And Daughter Of Late Nathey Khan
Resident Of Village - Tipoo, P.S. - Wazirganj, District - Gaya At Present
Resident Of Village - Harla, P.O. - Tungi, Miskaur, District - Nawada
4. Saleem Khan Son Of Late Elahi Bux Khan Resident Of Village - Tarwan
Tola Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
5. Zahid Khan Son Of Saleem Khan Resident Of Village - Tarwan Tola
Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
6. Rabiya Khatoon Daughter Of Saleem Khan Resident Of Village - Tarwan
Tola Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
7. Latif Mian Son Of Late Ramzan Mian Resident Of Village - Tarwan Tola
Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
8. Noor Jahan Bano Daughter Of Sattar Mian Resident Of Village - Dadaur
Tola - Tali, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
9. Adbur Rauf Khan Son Of Dehu Khan Resident Of Village - Tarwan Tola
Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
10. Jahangir Khan Son Of Dehu Khan Resident Of Village - Tarwan Tola
Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya
11. Sarwar Khan Son Of Dehu Khan Resident Of Village - Tarwan Tola
Bhaluahi, P.O. - Tarwan, P.S. - Wazirganj, District - Gaya

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 06-09-2016

Heard learned counsel for the petitioner.

2. The defendants, who jointly filed WS at an earlier
occasion, became hostile to each other and on account thereof
defendant no.2 has deflected the camp of petitioner/defendant



no.1, contradicted the statement having been incorporated in the WS whereupon asked for an opportunity from the Court by filing a petition on 18.07.2012 for filing separate WS which the learned lower court by the order impugned dated 16.03.2013 with regard to Partition Suit No. 54/11/177/11 pending before Sub-Judge, 3rd Gaya allowed, is the subject matter of challenge under the present petition.

3. It has been contended on behalf of petitioner that in a partition suit, each of the plaintiff/defendant stood on same pedestal and that being so, even having status of petitioner that of one of the defendants is entitled to challenged the order impugned in consonance with the conduct having been on behalf of defendant no.2. Furthermore, it has also been submitted that in the original WS both the defendants had denied status of Hajra Khatoon to be sister of defendant no.2 which defendant no.2 subsequently accepted and further such activity of defendant no.2 happens to be contrary to the pleading. Apart from this, it has also been submitted that the learned lower court had also fairly conceded to that there happens to be no provision under CPC whereunder second WS could be entertained. So, allowing the defendant no.2 to file separate WS happens to be contrary to the provision of law. Consequent thereupon, the order impugned is fit to be set aside.



4. Perused the different annexures inconsonance with the order impugned. Admittedly, petitioner is one of the defendants. The nature of the suit, as it speaks, happens to be Partition Suit whereunder identity of each of the co-sharer along with the extent of share is to be perceived and during course thereof, the Court is found within its domain to identify whether the plaintiff happens to be one of the siblings coming under category of co-sharer/tenant in common (as the case relates to Mohammedan Law), therefore, when the suit has been brought up at the end of the plaintiff, he had impleaded the parties who have been identified at his end as tenant in common and further, on account of presence of aforesaid tenant in common, he had claimed his right to the extent of his share whatever been shown under relief. Mere assertion of defendant that particular individual is not brother or sister is not going to axe upon the interest of the plaintiff rather it happens to be the plaintiff, dominating his plea and so, it is the plaintiff who has to say on this score. The deflection of the defendants from each other may be harmful to each of the defendant but that will not go adverse to the interest of the plaintiff whose interest the court is bound to adjudicate. The plea of defendant unless counter-claimed goes out of consideration during such exercise. Then in that event, whether the deflection of



defendant will give a cause to the co-defendant to raise question mark against his conduct is found beyond consideration as for that, the CPC is silent and rightly been silent because of the fact that even having turmoil amongst the interests of the defendants, will not affect upon prospect of suit whereunder plead of plaintiff found adjudicable.

5. Apart from this, having WS or inter se grudge amongst the defendants is not going to suggest anything against each other because of the fact that it is the plaintiff who, if fails, will not be entitled to get the relief so sought for and not the defendant who, unless made counter claim. Therefore, inter se dispute amongst the defendants will not result in proper adjudication of the suit.

6. Though, from the order impugned, it is apparent that the learned lower court had opined that there happens to be no provision in the CPC whereunder a second WS could be allowed to be entertained. For better appreciation, the learned lower court should have perceived presence of Order VIII Rule 9 of the C.P.C. which could be availed with the leave of the Court and further, by the order impugned, it appears that leave has been granted by the Court.

7. That being so, the order impugned needs no

interference, considering the status of the petitioner to be that of one of the defendants, whereupon, the instant petition stands rejected.

(Aditya Kumar Trivedi, J)

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