

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.558 of 2011

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Sheo Pujan Thakur @ Sheo Pujan Prasad Thakur, son of late Phulgun Thakur, resident of village-Sariatpur, P.O.-Damodarpur, P.S.-Pipra, District-East Champaran at present resident of mohalla-Chhota Bariarpur, Hawaii Adda Road, Motihari, P.O.-Motihari Court, P.S.-Motihari Town, District-East Champaran.

.... Appellant/s

Versus

1. Radhika Devi, wife of late Acchutanand Thakur, resident of village-Sariatpur, P.O.-Damodarpur, P.S.-Pipra, District-East Champaran.
2. Kishori Devi, wife of late Punyadeo Thakur.
3. Anil Kumar Thakur,
4. Rama Kant Thakur
5. Abhay Kant Thakur

All sons of late Punyadeo Thakur, resident of village-Sariatpur, P.O.-Damodarpur, P.S.-Pipra, District-East Champaran at present resident of mohalla-Chhota Bariarpur, Hawaii Adda Road, Motihari, P.O.-Motihari Court, P.S.-Motihari Town, District-East Champaran.

6. Geeta Devi, wife of Ajeet Singh, D/o late Punyadeo Thakur, resident of village-Ahiraulia, P.O.& P.S.-Kotwa, District-East Champaran.
7. Sumitra Devi, wife of Hari Shankar Prasad Singh, D/o late Acchuta Nand Thakur, resident of village-Jasauli Patti, P.O.& P.S.-Kotwa, District-East Champaran.
8. Uma Devi, wife of Nautan Sahi, D/o late Acchutanand Thakur, resident of village-Baruraj, P.O.-Baruraj, P.S.-Baruraj, District-Muzafarpur.
9. Asha Devi, wife of Awadh Kishore Singh, D/o Acchutanand Thakur, resident of village-Mathia, P.O.-Chakia, P.S.-Chakia, District-East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : None

For the Respondent no.1 : Mr. Madhurendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

16 24-11-2016

From perusal of the office note dated 08.09.2016, it appears that the instant Misc. Appeal stood dismissed against the respondent nos.2 and 3 on account of non-compliance of the Court's peremptory order dated 10.07.2015 passed by a co-ordinate Bench of this Court.

Despite repeated calls, none appears on behalf of the appellant in support of the present Misc. Appeal.

The learned counsel appearing on behalf of the

respondent no.1 submits that, in the last week also, when the matter was called out, none had appeared on behalf of the appellant; however, by an oral order, this Court had simply passed over the matter. He further submits that, in view of dismissal of the present appeal against the respondent nos.2 and 3, the present matter has become incompetent and cannot proceed further.

The instant Misc. Appeal has been filed assailing the validity and correctness of the order dated 30.03.2011 passed in Title (Partition) Suit No.470 of 2008 by the learned Sub-Judge-I, Motihari, East Champaran, whereby petition of injunction filed on behalf of the plaintiff-respondent no.1 herein was allowed and both sides have been restrained from alienating the suit property in favour of any third party. In view of dismissal of the present appeal, as against the respondent nos.2 and 3, the order of injunction has attained its finality against them.

The learned counsel appearing on behalf of the respondent no.1 submits that the trial of the title suit is going on and is at the advanced stage.

In above view of the matter, this Court is of the opinion that the order passed by the learned trial court, restraining both the parties from alienating the suit property in favour of any third party, does not warrant any interference by this Court particularly in the background that the present appeal has become incompetent on account of its dismissal as against the respondent nos.2 and 3.

For the reasons recorded above, the instant Misc. Appeal, as a whole, is dismissed.

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(Birendra Prasad Verma, J)