

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.273 of 2004

With

Interlocutory Application No.2993 of 2016

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Beni Malakar, son of late Ram Kali Prasad Malakar, resident of Mohalla-East Lohanipur, P.S.-Kadamkuan in the town and district of Patna.(Expunged vide order dated 20.10.2011 and substituted by his following heirs and legal representatives:-)

(i) Mostt. Rukmini Devi Wife of Late Beni Malakar

(ii) Satyendra Kumar

(iii) Bablu Kumar

Both Sons of Late Beni Malakar

(iv) Shobha Kumari, D/o Late Beni Malakar

(v) Chintu Kumar, minor sons of Late Beni Malakar and under the guardianship of her mother namely Mostt. Rukmini Devi

All are R/o Mohalla East Lohanipur, P.S. Kadamkuan, Town and District Patna

.... Appellant/s

Versus

Lal Babu Malakar, son of late Ramkali Prasad Malakar, resident of Mohalla-East Lohanipur, P.S.-Kadamkuan in the town and district of Patna.

.... Respondent/s

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With

First Appeal No.81 of 2014

With

Interlocutory Application No.3074 of 2016

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1. Mostt. Rukmini Devi, Wife of Late Beni Malakar

2. Satyendra Kumar

3. Bablu Kumar

4. Chintu Kumar

Sons of Late Beni Malakar

5. Shobha Kumari, D/o Late Beni Malakar

All the appellants are substituted heirs of original defendant Late Beni Malakar, R/o Mohalla East Lohanipur, P.S. Kadamkuan, Town and District Patna

.... Appellant/s

Versus

Lal Babu Malakar Son of Late Ram Kali Prasad Malakar R/o Mohalla East Lohanipur, P.S. Kadamkuan, Town and District Patna

.... Respondent/s

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Appearance :

(In FA No.273 of 2004)

For the Appellant/s : Mr. Mahesh Prasad, Adv.

Mr. Rajeev Kumar, Adv.

For the Respondent/s : Mr. Ranjan Kumar Dubey, Adv.

(In FA No.81 of 2014)



For the Appellant/s : Mr. Mahesh Prasad, Adv.
 Mr. Rajeev Kumar, Adv.
 For the Respondent/s : Mr. Ranjan Kumar Dubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

21 13-12-2016

Heard.

The First Appeal No.273 of 2004 was filed on behalf of the original defendant against the judgment and preliminary decree dated 30th July, 2004 passed in Title Partition Suit No.19 of 2000 by the learned Subordinate Judge-IVth, Patna. During the pendency of the aforesaid appeal the sole appellant passed away and he was substituted by his heirs and legal representatives, who are, now, substituted appellant nos. I to V. This First Appeal was admitted for hearing by an order dated 18.02.2008 and in response to the notice issued by this Court, the sole respondent has entered appearance through his counsel. Now, all the substituted appellants and the sole respondent are represented through their respective counsel.

The First Appeal No.81 of 2014 has been filed by the heirs and legal representatives of the original deceased defendant Beni Malakar, who are now substituted appellants in First Appeal No.273 of 2004. This First Appeal has been filed against the final decree dated 14.03.2014 passed in aforesaid Title Partition Suit No.19 of 2000 by the learned Subordinate Judge-IVth, Patna. In First Appeal No.81 of 2014 also the sole respondent has entered appearance through his counsel and both sides are represented by their respective counsel.

The learned counsel appearing on behalf of the appellants as also the learned counsel appearing on behalf of the sole respondent, in both the aforesaid First Appeals, are



unanimous in their submissions that, due to intervention of the common relatives and well-wishers, the matter has been compromised between the parties and in token of compromise a Panchnama has been prepared allotting the share to the parties with respect to the suit properties.

It is also contended by them that, in view of the aforesaid compromise arrived at between the parties, I.A. No.2993 of 2016 has been filed in First Appeal No.273 of 2004 and I.A. No.3074 of 2016 has been filed in First Appeal No.81 of 2014 on behalf of the appellants as also the sole respondent under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure. In the aforesaid two Interlocutory Applications, which are in the nature of compromise petition, all the appellants as also the sole respondent have sworn their respective affidavits in support of the compromise having been arrived at between the parties.

The learned counsel appearing on behalf of the appellants as also the learned counsel appearing on behalf of the sole respondent, in both the First Appeals, submit that in view of the compromise having been arrived at between the parties, both the First Appeals may be disposed of in terms of compromise indicated in I.A. No.2993 of 2016 as also I.A. No.3074 of 2016 and the panchnama annexed thereto, which has been signed by all the parties.

In above view of the matter, I.A. No.2993 of 2016 and I.A.No.3074 of 2014 are allowed, and the First Appeal No.273 of 2004 and First Appeal No.81 of 2014 are disposed of in terms of compromise by way of Panchnama appended with the aforesaid two Interlocutory Applications. The impugned judgment and



decree passed in Title Partition Suit No.19 of 2000 by the learned trial court stands accordingly modified.

Now, the office shall proceed to prepare the decree accordingly.

In the facts of the case, there shall be no order as to costs.

In view of the judgment passed today, I.A.No.4195 of 2012 filed in First Appeal No.273 of 2004, for its early hearing, has become infructuous, and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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