

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9051 of 2014

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Dilip Kumar Yadav Son of- Late Jadunandan Prasad Yadav, Resident of Village-
Mehadeotikar, P.O.- Shadipur, P.S.- Pirpanti, District- Bhagalpur

.... Petitioner.

Versus

1. Sujeet Kumar Sinha, Son of Late Ajit Kumar Sinha, Resident of Mohalla-
Tilkamanjhi, P.S.- Tilkamanjhi, District- Bhagalpur
2. Prem Kumar Sinha, Son of- Late Ganesh Lal, Resident of Mohalla- Tilkamanjhi,
P.S.- Tilkamanjhi, District- Bhagalpur

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-05-2016

V.Nath, J.

Heard the learned counsel for the petitioner and
the learned counsel appearing for the respondent no.1.

The learned counsel for the petitioner has
submitted that the respondent no.2 is not contesting party in the
proceeding of the suit or in this application as he has neither appeared
in the suit nor filed any written statement therein.

The legal sustainability of the impugned order has
been questioned by the petitioner by filing this application under
Article 227 of the Constitution of India whereby his prayer for
deciding the maintainability of the suit under Section 22 of the Hindu
Succession Act has been turned down.

The necessitous facts necessary in the present



context are that the suit property initially was held by the plaintiff and the defendant no.1 as co-sharer. Later on there had been partition in between the plaintiff and the defendant no.1 by a decree in T.S.No.201/1992 and T.S.No.21/1992 which were heard analogously and decreed on 19.10.2001. The present petitioner thereafter purchased the property from the defendant no.1-Prem Kumar Sinha by registered sale deed dated 10.08.2007. The plaintiff thereafter has filed the T.S.No.42/2008 claiming his rights as envisaged under Section 22 of the Hindu Succession Act as co-sharer of the suit property. The defendant-petitioner filed a petition before the court for trying the issue of bar of the suit by law or the jurisdiction of the court as preliminary issue which the learned court below has rejected by the impugned order.

It has been submitted by the learned counsel for the petitioner that as the status of the plaintiff as co-sharer of the land purchased by the petitioner no longer subsists after the decree passed in T.S.No.201/1992 and T.S.No.21/1992 against which the F.A.No.260/2005 was also filed and dismissed, the suit as filed is not maintainable. It has been canvassed that the filing of the two suits where the present suit property was also subject matter of partition is not in dispute and therefore also any right which the plaintiff might have in the suit property under Section 22 of the Hindu Succession

Act for preferential acquisition of the same has stood extinguished. It has, therefore, been submitted that the learned court below ought to have postponed the determination of other issues and ought to have dismissed this suit on the preliminary issue.

The learned counsel appearing for the plaintiff-respondent no.1, on the other hand, has submitted that the proceeding in the suit has reached to an advance stage and therefore the prayer made by the defendant-petitioner for trial of the issue of maintainability of the suit as preliminary issue is not maintainable. It has, however, been not denied by the learned counsel for the plaintiff-respondent that the T.S.No.201/1992 and T.S.No.21/1992 were filed where the suit property was also subject matter of partition between the plaintiff and defendant no.1 and the said two suits were decreed wherein the suit property was allotted to the share of the defendant no.1.

After considering the materials on record and the submissions on behalf of the parties, it is manifest that the suit filed by the plaintiff is squarely on the basis of the right conferred under Section 22 of the Hindu Succession Act. However, as evident from the said provision itself the said right is available only to a person who is a co-sharer of the property which has been transferred. In the present case, prima facie it appears that after the decree passed in two

suits i.e. T.S.No.201/1992 and T.S. No.21/1992 for partition the joint status of the plaintiff and the defendant no.1 (vendor of the present petitioner) has come to an end. In this view of the matter, when the fact of the decree passed in the aforesaid two suits have not been denied, the learned court below ought to have proceeded to try the issue of maintainability of the suit or the jurisdiction of the court under Section 22 of the Hindu Succession Act as preliminary issue.

This application is, accordingly, allowed and the impugned order is quashed. The petition dated 05.02.2013 (Annexure-3) filed by the defendant no.2-petitioner is allowed and the learned court below is directed to try the issue of maintainability of the suit as raised in the said suit as preliminary issue in accordance with law.

It is, however, clarified that any observation made in this order shall not prejudice the claim or rights of the parties in the suit in any manner.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.05.2016
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