

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13049 of 2014**

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Kripanand Thakur @ Anand Thakur & Ors

.... .... Petitioner/s

Versus

Bishwambhar Thakur & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Abbas Haider

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**

**ORAL ORDER**

3      28-01-2016                      Heard the learned counsel, Mr. Abbas Haider for the  
  
petitioners and the learned counsel, Mr. Rana Ishwar Chandra for  
  
the respondents on I.A. No.3016 of 2015.

At the time of hearing of this I.A., on the prayer of the  
learned counsel for both the parties, I heard the writ application  
itself on merit.

This application under Article 227 of the Constitution of  
India has been filed by the petitioners against the order dated  
22.04.2014 passed by the learned Sub Judge I, Madhubani in  
Partition Suit No.69 of 1950 and also for quashing the order dated  
18.05.2007.

It appears that Partition Suit No.69 of 1950 was filed by  
the plaintiffs-petitioners. The suit was decreed in its entirety by the  
trial Court. The defendants-respondents herein filed First Appeal



No.154 of 1952. The High Court after hearing both the parties by terms of the judgment dated 12.08.1960 modified the preliminary decree of the trial Court recording a finding that it is the admitted case of the parties that there was severance of status in the year 1920 and, therefore, the properties which are acquired by the defendants after 1920 are not liable for partition. An application was filed before the Court below by the defendants 1<sup>st</sup> set for exclusion of the properties purchased by the defendants after 1920. In view of this application, the trial Court directed the office to prepare a report regarding the properties which were purchased after 1920. The office clerk prepared the list of the properties which were acquired after 1920 mentioning the exhibit numbers by which the properties were acquired. The Court below by terms of order dated 18.05.2007 approved the report and directed for modification of the original preliminary decree. The petitioners thereafter filed review application before the Court below for review of the order dated 18.05.2007. By the impugned order dated 22.04.2014, the learned Court below found that there is no error apparent on the face of the record as the report of the office clerk was according to the direction of the High Court judgment and, therefore, rejected the review application.



The learned counsel, Mr. Abbas Haider for the petitioners submitted that there is no direction of the High Court to separate the properties and that all the properties of schedule II and also some properties of schedule I have been excluded from partition. The Court below has wrongly held that the properties covered by Exhibit C/1, C/5, B/11 to B/45, Exhibit C, C/6, Exhibit L, Exhibit R/3 and R/1 are the self-acquired property of the defendants 1<sup>st</sup> set. The learned counsel for the petitioners further submitted that earlier the application for modification had already been rejected by the Court below but subsequently the application has been allowed by order dated 18.05.2007.

On the other hand, the learned counsel, Mr. Rana Ishwar Chandra for the respondents submitted that the order passed by the Court below is according to the judgment of the High Court whereby the preliminary decree passed by the Court below was modified recording a clear finding that there was severance of the status of coparcener between the parties in the year 1920 and this was the admitted position before the High Court. The High Court also therefore, held that the properties acquired after 1920 cannot be partitioned. Accordingly, the Court below on the basis of the direction of the High Court called for the report from the clerk and

on the basis of the report of the clerk, the Court below has modified the preliminary decree by the impugned order.

Perused the order passed by the Court below dated 18.05.2007 as well as the order dated 22.04.2014.

So far the order dated 18.05.2007 is concerned, the Court below has clearly recorded the finding that the properties mentioned in the aforesaid exhibits have been acquired after the year 1920 and according to the High Court's judgment, by which the preliminary decree was modified, those properties are the self-acquired property of defendant No.1 after the year 1920. This order was sought to be reviewed subsequently. The Court below by the impugned order dated 22.04.2014 found that in fact, the preliminary decree was modified pursuant to the direction of the High Court passed in First Appeal No.154 of 1952.

It may be mentioned here that it is not the case of the plaintiff-petitioner that all the properties covered under Exhibit C/1, C/5, B/11 to B/45, Exhibit C, C/6 and Exhibit L, Exhibit R/2, R/1 are not purchased after 1920. Now, therefore, it is admitted fact that the properties covered by these exhibits have been purchased after 1920. Therefore, the learned Court below has rightly held that the order passed on 18.05.2007 cannot be

reviewed and so far the earlier order is concerned, it has been passed pursuant to the direction of the High Court. In such circumstances, in supervisory jurisdiction, the impugned order cannot be interfered with.

Thus, this writ application is dismissed.

**(Mungeshwar Sahoo, J)**

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