

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18320 of 2012

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1. Ashish Kumar Nandan @ Ashish Kumar Sah S/O Sri Shivnandan Sah
 Resident Of Village Teghra (Bazalpura), P.S. Teghra, Distt. Begusarai

.... Petitioner/s

Versus

1. Smt. Kumari Kumodini Wife Of Sri Arun Kumar Sah Resident Of
 Village Daniyalpur, Teghra, P.S. Teghra, Distt. Begusarai
 2. Sri Sanjay Kumar Singh S/O Sri Sudesh Prasad Singh Resident Of
 Village Bazalpura, Near Bhagwati Asthan, Teghra, P.S. Teghra, Distt.
 Begusarai
 3. Sri Rajendra Sah @ Madho Sah Son Of Late Parmeshwar Sah Resident
 Of Village Bazalpura, Teghra, P.S. Teghra, Distt. Begusarai
 4. Sri Shivnandan Sah @ Kari Sah Son Of Late Parmeshwar Sah Resident
 Of Village Bazalpura, Teghra, P.S. Teghra, Distt. Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Bijay Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Surendra Kumar Singh, Sr. Advocate Mr. Someshwar Dayal, Advocate Mr. Praveen Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 04-01-2016 Heard learned counsel for the petitioner as well as
 learned counsel representing the respondents.

2. Second counter affidavit has been filed on behalf of
 Respondents-1st party, taken on record.

3. From different annexures, it is apparent that parties
 who are co-sharers are on litigating terms since before. It is
 apparent from Annexure-3 that at an earlier stage Partition Suit
 No. 146/1987 was filed by one Parmeshwar Sah which was
 dismissed. Subsequently thereof, Partitition Suit No. 80/2002



(Annexure-3) has been filed by Amit Kumar wherein petitioner stood as defendant no.15, minor under the guardian-ship of his grandfather, Parmeshwar Sah. Now, as has been stated, petitioner has attained majority and is pursuing his cause. While the aforesaid Partition Suit remained pending, Respondent No.1, Kumari Kumodini who happens to be wife of Arun Kumar Sah, Defendant No.1 of Title Suit No. 80/2002, filed Title Suit No. 04/2006 wherein she asked for declaration of sale-deed executed by father of petitioner, Shivnandan Sah @ Kari Sah along with Rajendra Sah @ Madho Sah, his full brother in favour of Sanjay Kumar Singh, defendant 1st Party to be illegal, perverse and further for declaring the same to be set aside on the ground that there happens to be sale deed in her favour by other coparcener who got the property on partition and further, the sale-deed in question has put cloud over her sale deed.

4. Submission made on behalf of petitioner is that his father, Shivnandan Sah happens to be hostile and on account thereof, has caused prejudice by his unscrupulous activities and on account thereof, petitioner should be allowed to defend his interest. Furthermore, it has been submitted that plaintiff/respondent no.1 had set up a theme of previous partition having effected in the family and in case there happens to be

finding on that very score, that will adversely affect upon the prospect of Partition Suit No.80/2002 (Annexure-3). So submitted that the order impugned dated 22.08.2012 passed by Sub-Judge, 3rd Begusarai in Title Suit No. 04/2006 happens to be bad, perverse, hence is fit to be set aside.

5. Learned counsel for the respondents submitted that presence of petitioner has purposely been introduced by his father only to defeat the interest of the respondent no.1/plaintiff. Furthermore, it has also been submitted that from the order impugned, it is evident that evidences on behalf of respective parties have already been closed and now the case is fixed for argument. Furthermore, considering the totality of the event, the learned lower court rightly rejected the prayer.

6. Because of the fact that Title Suit No. 04/2006 has been instituted by the Respondent no.1/plaintiff for declaring the sale-deed dated 09.12.2005 executed by Shivrindan Sah @ Kari Sah, father of the petitioner along with his brother, Rajendra Sah @ Madho Sah and certainly, it happens to be hit by law of *lis pendence* in the background of pendency of Partition Suit No. 80/2002 and on account thereof, petitioner has an option available while going ahead with Partition Suit No.80/2002 as, in a Partition Suit, the status of each and every defendant happens to be that of

plaintiff and further, will have an option to challenge the aforesaid sale-deed by paying *ad valorem* court-fee by way of placing counter claim in the light of Order VIII Rule 9 of the C.P.C. or to challenge previous partition so suggested.

7. Thus, the story of previous partition is also to be looked into by the court concerned while proceeding with Partition Suit No. 80/2002 in the background of the fact that the Partition Suit no. 80/2002 happens to be the earlier suit than the Title Suit No. 04/2006 and on that very score, the parties will have an option open to pray appropriately before the competent court.

8. With the aforesaid observation, the instant petition is disposed of.

(Aditya Kumar Trivedi, J)

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