

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.347 of 2016

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Ashok Kumar Singh

.... Petitioner/s

Versus

Pankaj Kumar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 13-12-2016 Heard the learned counsel, Mr. Waliur Rahman for the petitioner and the learned counsel, Mr. Ajay Kumar Singh for the respondents.

Perused the impugned order dated 03.12.2015 passed by the learned Sub Judge V, Saharsa in Title Suit No.208 of 2012.

From perusal of the impugned order, it appears that one Shaligram Singh had four sons. One son is Pankaj Kumar Singh who is the plaintiff. He has filed the partition suit claiming partition in the suit property against the defendants who are the other three branches i.e. three sons of Shaligram Singh and Shaligram Singh himself.

It is admitted fact that the suit properties are only the properties which are in the name of Sabuj Devi, wife of Shaligram Singh. The dispute between the parties is only with respect to share. The petitioner herein filed an application under Order I Rule



10 C.P.C. for being added as party in the simple suit for partition on the ground that in fact, the properties which are purchased in the name of Sabuj Devi have been purchased by joint family fund and, therefore, the petitioner has half share in the property. The petitioner is the brother of Shaligram Singh. The Court below rejected this prayer on the ground that the Devar has no share in the property of Bhabhi as admittedly, the parties are claiming for partition of the property standing in the name of Sabuj Devi only.

The provision as contained in Order I Rule 10(2) C.P.C. has been interpreted by the Supreme Court in the case of **Kasturi v. Iyyamperumal, (2005) 6 Supreme Court Cases 733** and it has been held that “from a plain reading of the expression “all the questions involved in the suit” used in Order 1 Rule 10(2) C.P.C. it is abundantly clear that the legislature clearly meant that only the controversies raised as between the parties to the litigation must be gone into, that is to say controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiffs or the defendants inter se or questions between the parties to the suit and a third party.

In the present case, the controversy between the parties to the partition suit is regarding the share. So far the claim of the



petitioner that the suit property is the joint family property is not involved for decision in the present simple suit for partition. Therefore, this dispute which is being raised by the petitioner will be in one side and the parties to the suit i.e. plaintiffs and defendants of the suit will be one side and, therefore, in view of the decision of the Supreme Court, this cannot be decided in the present suit.

Admittedly, the properties are standing in the name of female member namely Sabuj Devi. Sabuj Devi is not a coparcener. Therefore, the first question to be decided, if the petitioner is added as party, will be whether the property has been purchased by the coparcener family in the name of Sabuj Devi. In other words, whether Sabuj Devi is benamidar of the coparcener family. Unless this finding is recorded, no relief can be granted to the petitioner.

This Court in the case of **Rameshwar Mistry and another v. Bebulal Mistry, AIR 1991 Patna 53** has held that if a property is standing in the name of a female member then simple suit for partition is not maintainable. Therefore, if simple suit for partition is not maintainable at the instance of the petitioner, how can he be added as party in the present simple suit for partition and the question raised by the petitioner will be decided in this simple



suit for partition.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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