

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7117 of 2014

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Sukhdeo Yadav & Ors

.... Petitioner/s

Versus

Kamleshwari Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bam Bahadur Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 18-02-2016

Heard learned counsel Mr. Bam Bahadur Jha for the petitioners.

2. By the impugned order the court below has rejected the objection of the defendants-petitioners to the Pleader Commissioner's report.

3. It appears that partition suit was filed by the plaintiffs-respondents. The suit was decreed granting half and half to both the brothers. Earlier Pleader Commissioner was appointed to partition the suit property. The Pleader Commissioner after partitioning the suit property submitted his report. The plaintiffs raised objection. The trial court set aside the Pleader Commissioner's report on the objection of the plaintiffs and appointed another Pleader Commissioner. The Pleader Commissioner after partitioning the suit property making two schedules according to the preliminarily decree submitted report.

To this Pleader Commissioner's report the petitioners filed objection. The court below has rejected the objection after considering the submissions and also taking into consideration the preliminary decree etc.

4. It may be mentioned here that the rights of the parties regarding partition have been finally decided by this order whereby the objection of the petitioners has been rejected. No doubt, in the order sheet the word "Pleader Commissioner's report is accepted" has not been mentioned but when the objection of the petitioners has already been rejected, there is no other option left before the Court than to accept the report of the Pleader Commissioner as no other objection has been raised.

5. The Hon'ble Supreme Court in **A.I.R. 2005 SC 2564 (Dr. Chiranji Lal Vs. Hari Das)** has held that a decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once

the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. There is no rule requiring the Court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation.

6. In view of the above position of law, in my opinion, this order whereby the objection of the petitioners has been rejected is a decree within the meaning of said term under Section 2(2) CPC. Therefore, this application under Article 227 of the Constitution of India against a decree is not maintainable. Accordingly, this writ application is dismissed. The petitioners may, if so advised, file appropriate appeal before appropriate forum.

(Mungeshwar Sahoo, J)

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