

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9536 of 2014

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Sachitanand Tiwari Son of Kashi Nath Tiwari R/o Village - Kaithiya, P.S. Kudra,
District - Kaimur (Bhabua)

.... Petitioner.

Versus

1. Gita Devi W/o Shawapati Pandey R/o Village - Lahurbari, P.S. Mohania,
District - Kaimur, Bhabua
2. Maya Devi W/o Rameshwar Tiwari R/o Village - Badhini, P.S. Kudra, District -
Kaimur, Bhabua
3. Rina Devi W/o Krishnanand Tiwari R/o Village At Present Village -
Muradabad, P.O. Muradabad, P.S. Sasaram, District - Rohtas
4. Rajvansh Tiwari S/o Late Ram Naresh Tiwari
5. Sanphula Devi W/o Rajvansh Tiwari
6. Kashi Nath Tiwari
7. Babban Tiwari
8. Lalan Tiwari Sl. No. 5 to 8 are S/o Late Ram Naresh Tiwari
9. Pramod Tiwari S/o Kashi Nath Tiwari, Sl.No.4 to 9 R/o Village - Kaithiya, P.S.
Kudra, District - Kaimur, Bhabua
10. Binod Tiwari
11. Ashok Tiwari
12. Vinay Tiwari
13. Rakesh Tiwari Sl. No. 10 to 13 are S/o Babban Tiwari R/o Village - Kaithiya,
P.S. Kudra, District - Kaimur, Bhabua
14. Nathuni Tiwari
15. Angad Tiwari
16. Surendra Tiwari Sl. No. 14 to 16 are Sons Late Ramdutt Tiwari R/o Village -
Kaithiya, P.S. Kudra, District - Kaimur, Bhabua

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Ashutosh Tripathy
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2016

V.Nath, J.

Heard the learned counsel for the petitioner. The

learned counsel for the plaintiff-respondents has also been heard.

Calling in question the legal sustainability of the
impugned order by which the learned court below has rejected the

petition under Section 4(b) and 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 praying for abatement of the suit filed by the plaintiff, the present application under Article 227 of the Constitution of India has been filed by the defendant.

From the materials on record and submissions, it transpires that the suit has been filed by the plaintiff-respondents for partition of their share in the suit land. The defendant no.1 in the suit is the father of the plaintiffs and in his written statement he has come out with the case that he has already transferred the suit property by executing sale deed on 16.12.2011.

The learned court below after considering the submissions and the facts and circumstances of the case has held that the substratum of the lis, in view of the pleas raised in the written statement, pertains to the legality and validity of the sale deed executed by the defendant. Consequently, by the impugned order the learned court below has rejected the petition filed by the defendants.

After considering the submissions on behalf of the parties, it is manifest that the present petitioner before this Court is one of the purchasers from the defendant no.1 on the basis of the sale deed dated 16.12.2011. It does not transpire from the present application that the defendant no.1 has any grievance against the

impugned order. It is also evident that the suit for partition has been filed wherein the defendants have resisted the claim and relief prayed by the plaintiff mainly on the ground that the suit property has already been transferred by sale. In such a circumstance, it is manifest that the legality and validity of the said sale deed would be the core issue in the suit. The learned counsel appearing for the petitioner has fairly accepted that the legality and validity of a sale deed cannot be decided by the consolidation court.

For the aforesaid reasons and discussions, this Court does not find any error of jurisdiction or illegality committed by the learned below in passing the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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