

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8619 of 2015

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1. Ashok Kumar Son of Late Vishwanath Prasad Resident of Laheri Tola Lalganj,
P.S. Lalganj, District Vaishali

.... Petitioner/s

Versus

1. Om Krishna Prasad Sah Son of Late Ramsewak Prasad Sah
2. Most. Munni Devi Wife of Late Anil Kumar
3. Ravi Shankar Kumar S/o Late Anil Kumar
4. Shiv Shankar son of Late Anil Kumar
5. Puja Kumari D/o Late Anil Kumar
6. Neha Kumari D/o Late Anil Kumar All residents of Mohalla - Purani Chaok
Lalganj, P.S. Lalganj, District - Vaishali.
7. Nand Kishore Prasad Son of Late Ram Krishna Prasad
8. Smt. Anju Devi W/o Nand Kishore Prasad
9. Pawan Kumar S/o Nand Kishore Prasad (under guardianship of his father Nand
Kishore Prasad)
10. Renu Devi W/o Ram Kumar Choudhary, D/o Late Ram Krishna Prasad
11. Manish Kumar S/o Ram Kumar Chaudhary
12. Vinod Kumar S/o Shri Shyam Babu Prasad Respondents No. 7 to 12 residents
of Purani Chowk Town Lalganj, P.S. Lalganj, District Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Madhvi

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL JUDGMENT

Date: 04-05-2016

Heard Mrs. Madhavi, learned counsel for the petitioner.

It appears that the petitioner is purchaser from the defendant no.3
in a partition suit no.74/1974/07/1978. In preliminary decree one third share has
been given to the defendant no.3 i.e. the vendor of the petitioner. During final
decree proceeding the petitioner filed application for carving out his purchased
property from the suit property. The Application was allowed and pursuant to the
said order the petitioner also deposited Rs. 500/- as cost for the pleader
Commissioner. However by the order dated 23.06.2014 the said application was

rejected on the ground that the pleader Commissioner has already submitted the report and prior to that the petitioner was not making any pairvi since long. It may be mentioned here that according to the petitioner the vendor is not objecting to the allotment of share to the petitioner.

It is settled principle of law that purchaser is to be adjusted in the share of the vendor and vendor has been allotted admittedly one third share in the suit property in final decree proceeding. The report has already been submitted by the pleader Commissioner.

In such circumstances the share of the petitioner is to be adjusted in the share of the defendant no. 3 and the defendant no. 3 is not objecting to allotment of separate Takhta. the petitioner shall get it from the defendant no. 3. In view of the factual position when there is no denial that the petitioner has not purchased or is not entitled to any share he will get his share from vendor.

In view of the above settled proposition of law I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

siddharth/-

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