

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9823 of 2013

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1. MD. ELIYAS
 2. MD. AINUL HAQUE
 3. MD. ARIF
ALL SON OF LATE AZIZUR RAHMAN
 4. MD. AIYUB HUSSAIN
 5. MD. YUNUSH HUSSAIN
 6. MD. SAIB.
PETITIONER NO.1 TO 6 SON OF LATE SAIDUR RAHMAN
RESIDENT OF VILLAGE- RUPNAGAR P.S. SAHARSA DISTRICT
SAHARSA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR THE COLLECTOR, SAHARSA
2. THE COMMISSIONER OF SAHARSA MUNICIPALITY
3. SHAMBHU KUMAR JHA SON OF SHOBHANAND JHA
4. MANOJ KUMAR JHA SON OF SHOBHANAND JHA
5. MEERA DEVI DAUGHTER OF LATE ANTARYAMI JHA.
ALL ARE RESIDENT OF VILLAGE- SAHARSA TOLA,
GANGJULA TOWN, SAHARSA, POST OFFICE + POLICE
STATION + DISTRICT- SAHARSA.
6. SMT. MOTI JHA WIFE OF DINESH JHA.
7. DINESH JHA SON OF LATE GANESH JHA.
BOTH RESIDENTS OF SAHARSA TOLA, GANGJALA TOWN,
TOWN- SAHARSA, P.O. + P.S. AND DISTRICT- SAHARSA.
8. GAJENDRA KUMAR SINGH SON OF PARMESHWARI SINGH
RESIDENT OF VILLAGE- MATIHANI, P.S. BAKHTIYARPUR,
DISTRICT- SAHARSA
9. PRADIP SARAFF
10. SANJAY SARAFF.
11. SUDHIR SARAFF.
12. PRITY SARAFF.
ALL ARE SONS AND DAUGHTER OF LATE SHANKAR LAL
SARAFF RESIDENT OF VILLAGE- SAHARSA MUNICIPALITY,
MOHALLA- GANGJALA, P.S. + DISTT. KHAGARIA.
13. JOHRA KHATOON WIFE OF MD. SAJMUDDIN, DAUGHTER OF
LATE AZIZUR RAHMAN RESIDENT OF MAUZA ROOL NAGRA,
WARD NO. 40, NAGAR PARISHAD, SAHARSA P.S. + DISTRICT-
SAHARSA.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Shashi Shekhar Dwedi, Sr. Adv.
Mr. Ranjan Kumar Dubey, Adv.
Mr. Rakesh Chandra, Adv.
Mr. Parth Gaurav, Adv.
Mr. Satendra Nath Shukla, Adv.

For the Respondent/s : Mr. Kinkar Kumar, SC-27.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER



Petitioners launched instant title suit, as submitted for declaration that the revisional survey entry in name of defendants happens to be wrong, illegal, incorrect, for declaration of his right, title, interest in the suit land, as has been forcibly and illegally dispossessed on 22.06.1981 and so, the defendant should be evicted and vacant possession be given to the petitioners, any other relief or reliefs which the petitioners is found entitled for and for that made specific recital.

It is not the case of the petitioners that they have individually purchased the property rather it happens to be through the line of inheritance and of which, as is evident Johra Khatoon, petitioner before the learned lower court (respondent no.13) is not a stranger being full sister.

It is also evident from the record that Partition Suit No.143 of 2010 is already going on amongst aforesaid Johra Khatoon with her brothers (petitioners).

Challenging the order impugned, it has been submitted on behalf of petitioners that being plaintiff they are legally competent to identify and implead the defendant and further, the relief inconsonance thereof. No one should be allowed to interfere unless and until court finds their presence to be a necessary party in terms of Order-I Rule-10 of the CPC and for that relied upon 2012(3) PLJR 277.

It has also been submitted that status of Johra Khatoon to be their full sister is being contested and unless and until, there happens to be a conclusive finding by a competent court that she happens to be full sister of petitioners

being daughter of Late Azizur Rahman she would not be entitled to be impleaded as a party nor her status, till such recognition is found necessary.

Furthermore, it has also been submitted that in case Johra Khatoon succeeds in partition suit then, she will automatically be entitled to get share in the property under dispute irrespective of being impleaded as a party or not.

Furthermore, it has also been submitted that neither any kind of relief has been sought for against Johra Khatoon nor any adverse to the interest of Johra Khatoon has been recited on account thereof, presence of Johra Khatoon is not at all warranted and therefore, allowing her intervener petition with do nothing but will complex the matter. Apart from this, it has also been submitted that aforesaid petition has purposely been filed by an imposter created by the opponents of the petitioner in the background of the fact that this title suit has been filed in the year 1990 and after elapse of so many years this petition has been filed. Had there been presence of Johra Khatoon in the family of the petitioners, then in that event, she must have been known to the filing of the aforesaid title suit and in the aforesaid background, had she any sort of grievances, she would have come up before the court as early as possible. Therefore, the cumulative effect happens to be that the learned lower court had illegally allowed the petition in terms of Order-I, Rule-10 of the CPC and so, the order impugned is fit to be rejected.

There is no controversy that both the parties are litigating one. It is also out of controversy that for the present

partition suit at the end of Johra Khatoon bearing no.143 of 2010 is pending. She, claiming herself to be daughter of Late Azizur Rahman and on account thereof, to be full sister of the petitioners. Admittedly, the aforesaid issue is yet to be finally decided by a competent court which may be by the court concerned.

In the aforesaid background and further, having the land under dispute claimed to be the ancestral property, on account thereof, the Johra Khatoon will have her presence, in case her status as being daughter of Late Azizur Rahman is properly recognized. So, at the present stage two options are available. The first one that petitioners should aver that in case in partition suit status of Johra Khatoon is duly recognized that she happens to be the daughter of Late Azizur Rahman then, in that event, they will give up the land to the extent of share of Johra Khatoon or, was to be allowed to be impleaded in this case wherein one of the issue should be framed by the learned lower court on that very score in the background of the fact that Johra Khatoon in case succeed, will have share along with the petitioners/plaintiff. Therefore, it is expected at the end of the petitioners/plaintiff to have their averment on that very score whether they intent to relinquish their interest with regard to land under dispute in case they succeeds in the present title suit, in the background of finding coming under partition suit no. 143/2010 in favour of Johra Khatoon and or to have separate issue in the instant title suit alone on that very score on account of having been allowed by the learned lower court presence of Johra Khatoon as, if she succeeds she

will have a share in the property along with the petitioners and for that, an opportunity is given to the petitioner/plaintiff to pray before the learned lower court and in case there happens to be such kind of any conditional offer at the end of the petitioners/ plaintiff, then in that event, the learned lower court may modify the order dated 15.04.2013 seeking the recourse of inherent power.

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

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