

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19678 of 2013

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1. Arun Devi W/O Shri Siya Ram Prasad And D/O Late Sarju Prasad Resident Of Mohalla- Sidharthpuri, Colony, Road No. 1, Manpur, P.S- Mufasil, Distt- Gaya
 2. Vidyawati Devi W/O Shri Arun Prasad And D/O Late Sarju Prasad Resident Of New Godown, Rajendra Path, P.S- Kotwali, Distt- Gaya.
 3. Binod Kumar @ Munna Prasad S/O Late Sarju Prasad Resident Of Mohalla- Sidharthpuri Colony, Road No. 1, Manpur, P.S- Mufasil, Distt- Gaya.

.... Petitioner/s

Versus

1. Pasupati Nath S/O Late Beni Madho Prasad Resident Of Village- Jhanakpur, P.S- Barachati, P.O- Itwan, District- Gaya.
2. Devendra Prasad S/O Late Beni Madho Prasad Resident Of Village- Jhanakpur, P.S- Barachati, P.O- Itwan, District- Gaya.
3. Satendra Kumar S/O Pasupati Nath Resident Of Village- Jhanakpur, P.S- Barachati, P.O- Itwan, District- Gaya.
4. Paras Nath S/O Late Beni Madho Prasad Resident Of Village- Jhanakpur, P.S- Barachati, P.O- Itwan, District- Gaya.
5. Pankaj Kumar S/O Paras Nath Resident Of Village- Jhanakpur, P.S- Barachati, P.O- Itwan, District- Gaya.
6. Appu Kumar Sinha S/O Late Gopal Prasad Resident Of Moalla- Sidharthpuri Colony, Buniyadganj, P.S- Mufasil, District- Gaya.
7. Gappur Kumar Sinha S/O Late Gopal Prasad Resident Of Moalla- Sidharthpuri Colony, Buniyadganj, P.S- Mufasil, District- Gaya.
8. Janak Prasad S/O Late Sarju Prasad Resident Of Village- Jhanakpur, P.S- Barachatti, P.O- Itwan, Distt- Gaya.
9. Madan Prasad S/O Late Sarju Prasad Resident Of Village- Jhanakpur, P.S- Barachatti, P.O- Itwan, Distt- Gaya.
10. Gopal Prasad S/O Late Sarju Prasad Resident Of Village- Jhanakpur, P.S- Barachatti, P.O- Itwan, Distt- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 05-05-2016

Heard Mr. Nand Kishore Prasad Sinha, learned counsel for the petitioners and learned counsel for the respondent nos. 1 to 5 who, according to the learned counsel for the petitioners, are the only contesting respondents in this application.

This application under Article 227 of the Constitution of India has been filed questioning the legal sustainability of the order by which the learned court below has rejected the prayer on behalf of the defendant-petitioners for dropping the proceeding for preparation of final decree and not to take further steps for preparation of the final decree.

The facts are not in dispute that the parties belonged to one family and in the suit for partition between them for the family property a preliminary decree was passed in the year 1982. It has been submitted by the learned counsel for the petitioners that First Appeal No. 50 of 1983 was filed in this Court against the preliminary decree but the same was dismissed for default subsequently without adjudication on merits. Thereafter a petition was filed by the plaintiffs in the court below praying for preparation of final decree in the suit. The learned court below by the order dated 01.12.2010 directed for taking steps for appointment of Survey Knowing Pleader Commission



as required under Order 26 Rule 14 C.P.C. for preparation of the final decree. Subsequently, however, a petition was filed on 16.04.2013 (Annexure-7) praying for rejection of the prayer on behalf of the plaintiffs for preparation of final decree and the appointment of a Pleader Commissioner as earlier directed. The learned court below by the impugned order has turned down the prayer on behalf of the defendants.

It has been submitted by the learned counsel for the petitioners that there had been compromise between the parties on 11.01.1993 through Panchayati and thereafter the parties came in separate possession of the lands allotted to them. It has been further submitted that the parties also got their names mutated by filing joint petition before the Anchala Adhikari with regard to the lands allotted to their respective shares and have also dealt with their lands by making transactions. It has been next submitted that though the compromise petition and another documents substantiating the case of the partition by compromise and showing the same to have been acted upon were produced before the learned court below but the learned court below has committed error of record stating in the impugned order that no compromise petition was produced on behalf of the defendants and further not considering the other corroborating documents produced by the defendant-petitioners. Learned counsel

has also submitted that the prayer for preparation of final decree was made nearly after 30 years and therefore it was also barred by limitation as the same should have been made within 12 years.

Learned counsel for the contesting respondents, however, has submitted that the defendant-petitioners did not produce the compromise petition before the learned court below. It has, however, been accepted by the learned counsel for the respondents that the petition for mutation as contained in Annexure-2 have been jointly filed by the parties praying for mutation of the land in their respective separate names. It has been further also contended that there is no period of limitation prescribed for preparation of a final decree after the preliminary decree.

After considering the submissions and the materials on record, it is manifest that there had been a preliminary decree in the suit for partition between the parties and the First Appeal No. 50 of 1983 against the same before this Court had also been dismissed for want of prosecution. Learned counsel for the petitioners has, however, failed to bring to the notice of this Court any provision of law or precedent to substantiate the contention that a petition for preparation of final decree must be filed within a period of 12 years. As such, this Court finds no substance in this submission on behalf of the petitioners. So far the next submission is concerned relating to the



error of record committed by the learned court below holding that no compromise petition was produced by the defendant-petitioners before the court, the learned counsel for the petitioners has also failed to point out specific averments in this regard in the application. However, this Court finds that the documents which have been produced and annexed with their application by the petitioners may be relevant for consideration before proceeding for preparation of final decree as the same may avoid unnecessary litigation. This view is also strengthened by the stand on behalf of the contesting respondents who have not denied the fact of filing of the petition jointly by the parties before the Anchala Adhikari for mutation of their separate names specifying the lands allotted to their respective shares.

This court, therefore, after careful consideration of the matter, is not inclined to interfere with the impugned order but grants the liberty to the defendant-petitioners to file appropriate petition before the learned court below itself for review or recall of the impugned order in view of the specific stand taken by the learned counsel for the petitioners that the relevant documents have been produced before the court but the same have not been considered.

Accordingly, this application is dismissed with liberty to the petitioners as aforesaid. It is, however, clarified here that if such

petition is filed by the petitioners, the same shall be decided by the learned court below in accordance with law on its own merits and without being prejudiced by any observation made in this order.

Devendra/-

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(V. Nath, J)

