

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22269 of 2012

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1. Ram Swaroop Prasad Singh Son Of Late Ayodhya Prasad Singh
Secretary, Tatar Ayodhya Uchh Vidyalaya, Naugachai, Resident Of Village
Harnath Chak, P.S. Gopalpur District Bhagalpur

.... Petitioner/s

Versus

1. Smt. Chand Tara Devi Daughter Of Late Upendra Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
2. Smt. Prabhawati Devi Daughter Of Late Upendra Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
3. Smt. Nayan Tara Devi Daughter Of Late Upendra Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
4. Smt. Sashi Tara Devi Daughter Of Late Upendra Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
5. Binod Kumar Singh Son Of Bhuneshwar Prasad Singh Resident Of
Village Pakra P.S. Naugachia District Bhagalpur
6. Sheo Kumar Prasad Singh Son Of Late Sita Ram Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
7. Ashok Kumar Singh Son Of Ambika Prasad Singh Resident Of Village
Pakra P.S. Naugachia District Bhagalpur
8. Subodh Kumar Singh Son Of Ambika Prasad Singh Resident Of Village
Pakra P.S. Naugachia District Bhagalpur
9. Mani Shankar Prasad Singh Son Of Yogendra Prasad Singh Resident Of
Village Pakra P.S. Naugachia District Bhagalpur
10. Prema Nand Singh Son Of Late Shyam Sunder Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
11. Pramod Kumar Singh Son Of Late Shyam Sunder Prasad Singh
Resident Of Village Pakra P.S. Naugachia District Bhagalpur
12. Arbind Prasad Singh Son Of Late Rajendra Prasad Singh Resident Of
Village Pakra P.S. Naugachia District Bhagalpur
13. Shiv Shankar Prasad Singh Son Of Late Rajendra Prasad Singh Resident
Of Village Pakra P.S. Naugachia District Bhagalpur
14. Md. Faruque Sah Son Of Late Gaffoor Sah Resident Of Village Uzani
P.S. Naugachia District Bhagalpur
15. Md. Azim Sah Son Of Late Gaffoor Sah Resident Of Village Uzani P.S.
Naugachia District Bhagalpur
16. Bibi Abuda Alias Dukhni Wife Of Sah Budhu Resident Of Village
Uzani P.S. Naugachia District Bhagalpur
17. Gashul Sah Alias Gatul Sah Son Of Late Md. Satul Sah @ Sattar Sah
Resident Of Village Uzani P.S. Naugachia District Bhagalpur
18. Shamsher Son Of Late Md. Satul Sah @ Sattar Sah Resident Of Village
Uzani P.S. Naugachia District Bhagalpur
19. Jabbar Sah Son Of Late Saiyab Sah Alias Sahabuddin Resident Of
Village Uzani P.S. Naugachia District Bhagalpur
20. Israfil Sah Son Of Late Saiyab Sah Alias Sahabuddin Resident Of
Village Uzani P.S. Naugachia District Bhagalpur
21. Makail Sah Son Of Late Saiyab Sah Alias Sahabuddin Resident Of
Village Uzani P.S. Naugachia District Bhagalpur
22. Bhutto Sah Alias Babul Sah Son Of Late Saiyab Sah Alias Sahabuddin
Resident Of Village Uzani P.S. Naugachia District Bhagalpur
23. Qayum Sah Son Of Late Mokim Sah Resident Of Village Uzani P.S.
Naugachia District Bhagalpur

.... Respondent/s



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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh -Advocate

For the Respondent/s : Mr. Manoj Kumar, no.1 -Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 25-01-2016

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. Petitioner has prayed for setting aside the order dated 04.09.2012 passed by learned Additional District Judge, 1st Naugachia in Title Appeal No. 220/2006 whereby and whereunder acceding to the prayer made on behalf of respondents, 1st party/appellant directed to erase presence of these petitioners from the memo of appeal.

3. It has been submitted on behalf of petitioner that his status has been acknowledged during pendency of Title Suit and on account thereof, his prayer has been allowed to be impleaded as intervener/defendant before the learned lower court. After dismissal of the suit plaintiff filed appeal before this Court which, on account of enhancement of jurisdiction of the learned lower court, was forwarded to the learned District Judge and, during course thereof, at the request made by the appellant/plaintiff, the appellate court directed to delete the name of petitioners who were respondents since before.

4. Learned counsel for the respondents submitted that prayer of the petitioner is not maintainable. During course of

pendency of Title Suit, petitioner had purchased the disputed land. During pendency of Title Appeal, petitioner had sold away the land under dispute. That means to say, the basis over which, he has been impleaded ignoring the principle of *lis pendence* has also to be applied in the same manner during course of pendency of appeal when, the petitioner/respondent/intervener defendant sold away the land in favour of Chandrakala Devi. So submitted that prayer of the appellant/plaintiff was just, legal and proper and in likewise manner action of the learned appellate court.

5. The presence of the parties during initial stage is to be perceived even at the appellate court and on account thereof, presence of petitioner was very much essential. In case, respondent/appellant/plaintiff had any grievance on account of sale deed executed by the petitioner in favour of Chandrakala Devi, for that appellant/plaintiff was well within his domain to exercise such right in accordance with law.

6. That being so, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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