

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 1269 of 2017

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Azra Imam, Wife of Shamshad Imam and Daughter of Md. Ishaque, Resident of Bedil Mazil, Ramna Road, P.S.- Pirbahore, District- Patna, presently residing at Firoz Palace, Flat No. 302, Indrapuri Colony (Samanpura Road), Raja Bazar, P.S.- Shastri Nagar, Town & District- Patna.

.... Plaintiff/Petitioner

Versus

1. S. M. Ismail, Son of Late Md. Ishaque and resident of Bedil Manzil, Ramna Road, P.S.- Pirbahore, District- Patna and presently residing at N-3, Third Floor, Sapna Apartment- 4, Naya Tola, P.S.- Pirbahore, P.O.- Naya Tola (Bankipore), Town and District of Patna, Pin- 800004.

2. S.M. Yamin, Son of Late Md. Ishaque and resident of Bedil Manzil, Ramna Road, P.S.- Pirbahore, District- Patna and presently residing at Flat No. 204, Mahamaya Apartment, Ramna Road, P.S.- Pirbahore, Town & District- Patna, Pin- 800004.

3. Ahmad Ali, Son of Late Md. Ishaque and resident of Bedil Manzil, Ramna Road, P.S.- Pirbahore, District- Patna and presently residing at N-3, Third Floor, Sapna Apartment- 4, Naya Tola, P.S.-Pirbahore, P.O.- Naya Tola (Bankipore), Town & District- Patna, Pin- 800004.

4. Khowalid, Wife of Ajaz Ahmad @ Arshad, resident of Mohalla-Quila, P.O.- Bettiah, West Champaran, presently residing at Quarter No. 293, Sector-III, Bokaro Steel City, P.O. + P.S.- Bokaro Steel City, District- Bokaro, Jharkhand State, Pin- 827001.

.... Defendants/Opposite Party 1st Set

5. Md. Ali, Son of Md. Ishaque, Resident of Bedil Manzil, Ramna Road, P.S.- Pirbahore, District- Patna.

6. Naushaba Khatoon, Wife of Md. Suleman, Resident of Village- Maheshkhat, Via- Narkatiyaganj, District- West Champaran.



7. Mobashara, Wife of Masoom Ali, Resident of Rahmani Khankah, Rahmaniya at and P.O.- Maksoodpur, Town & District- Munger.

8. Omaima, Wife of Md. Kausar, Resident of near C.M College, P.O. & P.S.- Darbhanga, Town & District- Darbhanga.

.... Defendants/Opposite Party 2nd Set

9. Green Homes Developers Pvt. Ltd. through its Director Mohammad Neyaz Alam, Corporate Office at Saumaya Residency, Ground Floor, Haroon Nagar, Sector-1, P.O. + P.S.- Phulwarisharif, Town & District- Patna, Pin- 801505.

10. Md. Neyaz Alam, Son of Ejaj Ahmad, Director of Green Homes Developers Pvt. Ltd. corporate Office at Saumaya Residency, Ground Floor, Haroon Nagar, Sector-1, P.O. + P.S.- Phulwarisharif, Town & District- Patna, Pin- 801505.

.... Proposed Opposite Party 3rd Set

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Dev Kumar Pandey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-12-2017

Heard both sides.

2. The petitioner filed this petition against the order, dated 07.06.2017, passed by learned Sub-Judge-XI-Cum-Additional Chief Judicial Magistrate, Patna, in Title Suit No. 89 of 2001.

3. The petitioner is the plaintiff. She filed a suit for partition against her brothers and sisters. During the



pendency of the suit, the petitioner filed a petition, under Order 1 Rule 10(2) of the Civil Procedure Code, stating therein that her brothers and sisters entered into an agreement with the Green Homes Developers Pvt. Ltd. and the Green Homes Developers Pvt. Ltd. started construction of the building. According to the development deed, the Developer would get 50% of the constructed building. The rest 50% shall be given to the owners of the land. Therefore, the Developer, being a necessary party, be made party-defendant in the case. By the impugned order, dated 07.06.2017, the learned Sub-Judge-XI-Cum-Additional Chief Judicial Magistrate, Patna has rejected the petition.

4. Learned Counsel for the petitioner submits that in view of the provision as contained in Section 5(1) of the Bihar Apartment Ownership Act, 2006, the moment the deed of development is executed; the Developer would get 50% of the developed property. The defendants have stated in their rejoinder that Bibi Khalida, daughter of late Professor Abdul Mannan, was the sole owner of the property. The said Bibi Khalida had gifted her property, on different dates, in favour of S.M. Ismail, S.M. Yamin and Mohammad Ali. The defendants admitted that if the plaintiff succeeds in suit, she would get her share out of the shares allotted to her brothers and sisters. Learned Counsel for the petitioner submits that unless the share is defined for the developed building, the petitioner suffers



irreparable loss, if the Developer is not made party-defendant and it will cause multiplicity of suits also. In support of his contention, learned Counsel for the petitioner has placed reliance on a judgment of the Supreme Court in case of **Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr.**, reported in **(2005) 11 SCC 403**.

5. Having considered the aforesaid submissions and on perusal of the judgment on which learned Counsel for the petitioner has placed reliance, I do not find any force in such submissions. The petitioner filed the suit impleading her brothers and sisters as party-defendants. The brothers and sisters of the petitioner had already entered into an agreement with the Green Homes Developers Pvt. Ltd. If the petitioner succeeds in her suit and get share in the property of her mother, the petitioner will get share in the developed building, according to the share allotted to her. In my view, the Developer is not at all necessary party in the suit.

6. Having considered the facts aforesaid, I do not find any jurisdictional error in the order impugned. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.01.2018
Transmission Date	N/A

