

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.778 of 2016

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Shambhu Singh @ Shambhu Saran Singh S/o Late Dinesh Singh, R/o Vill-
Malaypur, P.S.- Malaypur (Barahat) Dist- Jamui (Bihar). Appellant/s

Versus

1. Mrityunjay Pd. Singh, S/o Late Harihar Pd. singh R/o Vill- Sheonagar, P.S-
Ranjwara, Dist- Banka (Bihar).
2. Ram Narayan Singh
3. Deep Narayan Singh
4. Sri Krishna Singh All Defendants from 2 to 4 S/o Late Harihar Pd. Singh, R/o
Vill Sheonagar, P.S. Panjwara, Dist- Banka (Bihar). Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjiva Kumar Singh, Adv.
For the Respondent/s : Mr. Uday Kumar, Adv.
Mrs. Sneha Singh, Adv.
Mr. Dharendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-03-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents. With the consent of the parties, the
present application is being disposed of at this stage.

It would be also pertinent to mention that the
interlocutory application (I.A. No. 9417 of 2016) has been filed on
behalf of the respondent no. 1 praying for vacating the order of stay of
the further proceeding of the suit as granted by this Court by order
dated 29.09.2016.

After considering the submissions and the materials on
record, it is manifest that the suit property admittedly was the self



acquired property of Harihar Prasad Singh. It is also not in dispute that Harihar Prasad Singh had four sons and seven daughters. It was the case of the plaintiff-respondent no. 1 that Harihar Prasad Singh executed the gift deed in favour of his four sons out of whom one son separated during the life time of Harihar Prasad Singh. The plaintiff-respondent no. 1 filed the suit for partition of the suit property. During the pendency of the suit, a petition was filed by Jai Prakash Singh, the son of the alleged separated son of Harihar Prasad Singh praying for his impleadment as intervenor-defendant in the suit. The plaintiff-respondent no. 1 resisted the prayer of the said Jai Prakash Singh on the ground that the father of the said person had already separated from the family during the life time of his father Harihar Prasad Singh. However, by order dated 20th November 2015, the learned court below allowed the prayer of Jai Prakash Singh to be impleaded in the suit. Subsequently, the present petitioner claiming himself to be the son of the deceased daughter of Harihar Prasad Singh filed a petition for his impleadment as intervenor-defendant in the suit but by the impugned order, the learned court below has rejected the petition filed by the petitioner.

It is evident that the status of the present petitioner to be one of the sons of the deceased daughter of Harihar Prasad Singh has not been denied. The suit property admittedly belonged to Harihar Prasad Singh and was his self acquired property. In that view of the



matter, and also in view of the fact that by earlier order dated 20.11.2015, the learned court below has allowed the prayer for intervention of Jai Prakash Singh, this Court finds that the learned court below has taken an inconsistent stand while refusing the prayer of the present petitioner in the admitted facts of the case. The basis of the prayer for impleadment as raised by the petitioner is substantially the same as that of Jai Prakash Singh which was earlier upheld by the court in its order dated 20.11.2015. At this juncture, learned counsel for the respondent no. 1 has strongly submitted that the suit property is the gifted property of the plaintiff and therefore the defendants including the petitioner cannot have a share in the same. It requires no effort to conclude that the said submission pertains to an issue to be decided in the suit on the basis of the pleadings and evidence of the parties. This Court, in this backdrop, is inclined to allow the prayer of the present petitioner to be impleaded as intervenor-defendant in the suit.

Accordingly, the present application is allowed and the impugned order passed by the learned court below is set aside. The petition filed by the petitioner dated 07.05.2016 is allowed and the petitioner is directed to be impleaded as intervenor-defendant in the suit.

However, in view of the submission by learned counsel for the respondents that the suit has reached at the advanced stage, the



learned court below is directed to proceed expeditiously with the suit without granting necessary adjournments to the parties in accordance with law.

Devendra/-

(V. Nath, J.)

AFR/NAFR	
CAV DATE	
Uploading Date	11.05.2017
Transmission Date	

