

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 798 of 2016

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Ashok Kumar, Son of late Rajaram Prasad, Resident of Village-Bankatwa, Nagar Parishad Bagaha, Police Station & Post Office-Bagaha, District- West Champara.

.... Petitioner

Versus

Rupesh Kumar, Son of late Rajaram Prasad, Resident of Village-Bankatwa, Nagar Parishad Bagaha, Police Station & Post Office-Bagaha, District- West Champara.

.... Respondent

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Appearance :

For the Petitioner : Mr. Bakshi S.R.P. Sinha, Sr. Adv.
Mr. Zainul Abedin, Adv.

For the Respondent : Mr. Nishant Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-12-2017

Heard Mr. Bakshi S.R.P. Sinha, learned Senior Counsel for the petitioner and Mr. Nishant Kumar Sinha, learned Counsel for the respondent.

2. The petitioner filed this petition for quashing the order, dated 08.06.2016, passed by learned Sub-Judge-III, Bagaha, West Champaran, in Partition Suit No. 31 of 2013. The petitioner is the defendant No. 1 in said Partition Suit No. 31 of 2013, whereas the plaintiff is the respondent



No. 1 in the present case. The plaintiff filed suit for partition of the Joint Family Property, as mentioned in Schedule-I of the plaint. The plaintiff claimed 1/8th share in Schedule-I land.

3. The petitioner-defendant No. 1 filed a petition seeking permission to sell 4 kathas of land, out of total area of 15 kathas, from Plot No. 1202, Khata No. 391, Mauja-Bankatwa. The learned Sub-Judge, Bagaha, West Champaran granted permission to the petitioner *vide* order, dated 07.12.2015, but the plaintiff filed a petition for recalling of the said order, dated 07.12.2015. The learned Sub-Judge *vide* order, dated 08.06.2016, recalled the said order, dated 07.12.2015, and also directed the defendant not to sell any property.

4. Mr. Bakshi S.R.P. Sinha, learned Senior Counsel for the petitioner, submits that the petitioner has earlier filed Title Suit No. 16 of 2004, seeking declaration of title and recovery of possession for 2 dhurs of land of Plot No. 1202, Khata No. 391, Mauja-Bankatwa, from the defendants. The said suit was decreed. Thereafter, the petitioner-plaintiff filed Execution Case No. 3 of 2008 for recovery of possession over 2 dhurs of land of Plot No. 1202, Khata No. 391, Mauja-Bankatwa. During the pendency of the execution case, the plaintiff-respondent No. 1 filed the present suit, bearing



Partition Suit No. 31 of 2013, for partition of the property, claiming 1/8th share in the land mentioned in Schedule-I of the plaint.

5. Mr. Bakshi S.R.P. Sinha, learned Senior Counsel for the petitioner, submits that the petitioner filed the petition for grant of permission to sell the lands to meet the expenses of marriage of his daughter. The permission for the same was granted on 07.12.2015, but on the petition of the plaintiff-respondent No. 1, the same permission was withdrawn and the petitioner was not granted any permission to sell any piece of land. He submits that Plot No. 1202 of Khata No. 391 is 15 kathas and if permission is granted to the petitioner, the plaintiff-respondent No. 1 could not suffer any irreparable loss. The aforesaid land may be allotted in the share of the petitioner-defendant No.1. Learned Counsel for the respondent submits that the petitioner filed a petition for grant of permission to meet the expenses of marriage of his daughter in the year 2015, but thereafter, the petitioner has also purchased a piece of land and this fact shows that he had no necessity to sold the lands to meet expenses of marriage of his daughter.

6. It has further been submitted on behalf of the respondent that let this order be set-aside with a direction to learned Sub-Judge-III, Bagaha, West Champaran to consider



the petition of the petitioner afresh, taking into consideration all the facts and circumstances of the case as to whether the petitioner is at all required to sell the Joint Family Property to meet the expenses of his daughter’s marriage.

7. Having considered the facts aforesaid and the fact that the order, dated 08.06.2016, passed in Partition Suit No. 31 of 2013, recalling permission, does not speak any sound reason, the same is set-aside with a direction to learned Sub-Judge, Bagaha, West Champaran to consider the case of the petitioner-defendant No. 1 afresh for grant of permission to sell portion of Joint Family Property to meet the expenses of his daughter’s marriage within a period of two months from the date of receipt/production of a copy of this order.

8. This application is, accordingly, allowed.

(Prabhat Kumar Jha, J)

Praveen-II/-

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

