

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.216 of 2016

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1. Suresh Bhagat S/o Late Harihar Bhagat
2. Smt. Meena Devi W/o Shri Suresh Bhagat
3. Nitesh Bhagat @ Ritesh Malakar @ Sonu
4. Santosh Bhagat @ Monu @ Santosh Kumar Both S/o Suresh Bhagat
5. Smt. Shiv Kumari Devi @ Sukumari Devi W/o Late Harihar Bhagat All R/o
Mohalla - Kalibari Road, Near Gopinath Mandir, P.S. - Mithanpura, Distt. -
Muzaffarpur.

.... Petitioners

Versus

1. Shri Awadhesh Bhagat S/o Late Harihar Bhagat R/o Mohalla - Kalibari Road,
Near Gopinath Mandir, P.S. - Mithanpura, Distt. - Muzaffarpur.
2. Smt. Sonam Devi W/o Late Pramod Kumar @ Pramod Raj, D/o Lakshman
Bhagat R/o Vill. - Maniyari, P.O. - Maniyari, Dist. - Muzaffarpur.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-03-2017

Heard Mr.S.S.Dwivedi, learned senior counsel
appearing for the petitioners.

This revision application has been heard on merits
alongwith the interlocutory application (I.A.No.05/2017) at this stage.

The present revision application has been filed by
the defendants 1st party in the suit against the order dated 30.05.2016
passed in T.S.No.119/2011 rejecting the petition dated 24.09.2012
filed by the defendant-petitioners praying for rejection of the plaint.

After considering the submissions and from



perusal of the relief as prayed in the plaint (Annexure-1), it is transparent that the suit has been filed by the plaintiff for declaration of his right, title over Schedule-III properties and for demarcation of the same and in the alternative the plaintiff has prayed for partition of his 1/4th share out of Schedule-I property. The petition has been filed by the defendant 1st party under Order 7 Rule 11 C.P.C. praying for rejection of the plaint on the grounds mentioned therein. The learned court below has come to the conclusion that the prayer as made in the petition by the defendants has no substance and the plaint does not deserve to be rejected on the basis as pleaded. Accordingly the impugned order has been passed.

Mr.Dwivedi, learned senior counsel for the petitioners, during the course of submission, has drawn the attention of the Court to the averments made in the plaint and has submitted that the suit property described in the schedule of the plaint has been acquired by the defendant no.1 Suresh Bhagat in the name of defendant no.5 Shiv Kumari Devi. On this basis, it has been contended that the suit was hit by the provisions of Benami Transaction Act as well as barred by the provisions of other Acts as detailed in the petition. However, during the course of submission, while going through the averments made in the plaint, it appears in paragraph-19 of the plaint as well as in other paragraphs and the



Schedule-I the plaint it has been stated that the properties have been acquired in the name of the Suresh Bhagat, Harihar Bhagat and Shiv Kumari Devi.

In view of the aforesaid fact, the submission has been made by learned senior counsel for the petitioners as last resort that the petitioners be granted liberty to raise appropriate objection at the appropriate stage of the suit.

After considering the aforesaid submissions and the perusal of the impugned order, this Court does not find that the learned court below has committed error of jurisdiction or material irregularity in passing the impugned order refusing to reject the plaint as prayed for by the defendant-petitioners.

The revision application is accordingly dismissed.

It, however, goes without saying that the defendants have the liberty to raise appropriate objection, permissible in law, at appropriate stage of the suit in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2017
Transmission Date	

