

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.27 of 2016

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1. Lala Singh Son of Late Mishri Singh
 2. Satendra Singh
 3. Gajendra Singh @ Gajendra Kumar
 4. Shailendra Singh @ Sailendra Kumar All sons of Sri Lala Singh
 5. Chandan Kumar
 6. Kundan Kumar @ Kundan sons of Sri Satendra Singh null
 7. Puja Kumari daughter of Sri Gajendra Singh
 8. Rahul Kumar (Minor)
 9. Avinash Kumar (Minor) Both minors sons of Sri Gajendra Singh
 10. Shagun Kumar (Minor) Son of Sri Shailendra Singh
 11. Baby (Minor) daughter of Sri Shailendra Singh All the minors under the guardianship of the natural father and next friend All resident of village - Rupaspur, P.O. Sahaynagar, P.S. Rupaspur, Danapur, District - Patna

.... Petitioner/s

Versus

1. Smt. Sita Devi Daughter of Late Mishri Singh and Wife of Sri Ganesh Singh resident of village - Rupaspur, P.O. Sahaynagar, P.S. Rupaspur, Danapur, District - Patna at Present resident of village - Shitwa, P.O. Kathiya, P.S. Malsalami, District - Patna
2. Hewanti Devi Daughter of Late Mishri Singh and Wife of Sri Suresh Singh resident of village - Rupaspur, P.O. Sahaynagar, P.S. Rupaspur, Danapur, District - Patna at Present resident of village - Sasauna, P.O. Sonwai, P.S. Dhanarua, District - Patna
3. Smt. Saroj Devi Daughter of Late Mishri Singh and Wife of Sri Sunil Singh resident of village - Rupaspur, P.O. Sahaynagar, P.S. Rupaspur, Danapur, District - Patna at Present resident of village - Maherumpur Benauli, P.O. & P.S. Bihta, District - Patna
4. Gyansheela Devi Widow of Late Jitendra Singh
5. Raj Kumar Singh
6. Chintu Singh
7. Bikku Kumar All sons of Late Jitendra Singh
8. Niti
9. Sohani Both minor daughter of Sri Raj Kumar Singh
10. Subham
11. Suman Both minor daughter of Chintu Singh All the All the Minors under the guardianship of the natural father and next friend
12. Neelam Devi Widow of Late Upendra Singh
13. Deepak Kumar
14. Nandan Kumar
15. Sonu Kumar All sons of Late Upendra Singh
16. Nibha Kumari Daughter of Late Upendra Singh
17. Sri Narendra Singh Son of Late Mishri Singh
18. Vikash Kumar
19. Binish Kumar Both Sons of Sri Narendra Singh All resident of village - Rupaspur, P.O. Sahaynagar, P.S. Rupaspur, Danapur, District - Patna

.... Defendant 2nd set- Opposite Party 2nd set.



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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-02-2017

Heard Mr. J. S. Arora, learned Senior Counsel appearing for the petitioners.

The present application has been filed by the petitioners questioning the legal sustainability of the impugned order dated 03.11.2015 passed in Title Suit No. 268 of 2011 by which the learned court below has rejected the petition under Order 7 Rule 11 CPC filed by the petitioners praying for rejection of the plaint.

From the plaint of Title Partition Suit No. 268 of 2011 it transpires that the plaintiffs opposite parties 1st set have filed the said suit praying for a decree for partition of their 1/7th share in the suit properties besides other consequential reliefs. The defendant-petitioners appeared in the suit and filed the petition purported to be under Order 7 Rule 11 CPC and Section 11 and 151 CPC praying for rejection of the plaint. From perusal of the averments made in the said petition it transpires that the defendant-petitioners have claimed the suit property to be their own property on the basis of a deed of gift dated 12.07.1932 in favour of the mother of the petitioner No. 1 Lala Singh. The present petitioners have further averred the fact regarding



the earlier Title Suit No. 132 of 1997 filed against the present petitioners by the brothers of the present plaintiff with further averment that the said suit was decreed and the said decree has remained affirmed by the Apex Court.

Mr. Arora, learned counsel for the petitioners has submitted that the learned court below has committed error of jurisdiction and acted with material illegality in turning down the payer for rejection of the plaint as made by the present petitioners. It has been contended by the learned Senior Counsel that the deed of gift in favour of the mother of the petitioner No. 1 has not been denied by the plaintiff-opposite party 1st set and in that view of the matter there is clearly no dispute with regard to the suit property. It has been further argued that in view of the decree of the earlier title suit dated 01.03.1997, the plaintiff-opposite party 1st set have no case to be tried. It has also been contended that no relief has been sought by the plaintiff-opposite party 1st set against the deed of gift with regard to the suit property in favour of the mother of the petitioner No. 1 Lala Singh.

After considering the submissions and perusal of the impugned order, it is manifest that the learned court below has come to the conclusion that the ground/objection set up by the petitioners are based upon the question of facts. This Court also during the course



of submission has not been persuaded to find any illegality in the impugned order in view of the averments made in the plaint. The learned court below has rightly come to the conclusion that the prayer for rejection of the plaint cannot be allowed on the basis of the averments of facts in the written statement.

The learned court below thus has not committed error of jurisdiction or material illegality in passing the impugned order.

This revision application is, accordingly, dismissed.

(V. Nath, J)

Vats/-

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

