

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.68 of 2017

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1. Brajesh Singh, S/o Late Laldhari Singh, resident of Village Quasimchak, P.S.- Dulhin Bazar, Dist.- Patna.

.... Appellant/s

Versus

1. Ramakant Sharma, S/o Late Awadhesh Singh.
2. Smt. Poonam Devi, W/o Late Ranjeet Singh.
3. Nand Kumar (Minor), S/o Ranjeet Singh, Minor under guardianship of his mother who is his well wisher and Common friend.
4. Smt. Kamlesh Devi, W/o Late Awadhesh Singh,
5. Most. Binda Devi, W/o Late Dhanraj Singh, All resident of Village of Quasimchak, P.S.- Dulhin Bazar, Dist.- Patna.
6. Ram Sajjan Singh.
7. Jagdish Singh, Late Brahamdeo Singh.
8. Sanjeev Singh, S/o Jagdish Singh, All resident of Village Of Quasimchak, P.S. Dulhin Bazar, Dist.- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shri Prakash Tiwari

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-01-2017 Heard the learned counsel Mr. Sri Prakash Tiwari for the petitioner and learned Counsel Mr. Bimal Kumar for the plaintiff-respondents.

It appears that the plaintiff-respondents filed Title Suit No. 04 of 2014 claiming for partition of the suit property. The plaintiff described the present petitioner Brajesh Singh as the son of Paras in the plaint. The plaintiff further alleged that, in fact, this petitioner is the son of Paras and not the son of Laldhari Singh. Nowhere, in the relief, the plaintiff ever claimed for declaration



that Brajesh Singh is the son of Paras nor he sought any declaration that Brajesh Singh is not the son of Laldhari Singh. Simple suit for partition has been filed. Defendant No. 3 (Petitioner) appeared and filed the contesting written statement claiming the share in the property alleging that he is, in fact, the son of Laldhari Singh. Now, therefore, in view of contention between both the parties, the question of parentage of Brajesh Singh has to be proved by the plaintiff because according to him Brajesh Singh is the son of Paras. Now, if this allegation made by the plaintiff is proved by the plaintiff, then only defendant no. 3 will not be entitled to any share in the property and for that the plaintiff has to adduce his evidence in support of his contention in view of Section 50 and Section 60 of the Evidence Act. It is admitted fact that now only issues have been framed in the suit and the plaintiff is yet to adduce his evidence.

The court below by the impugned order has allowed the application filed by the petitioner on the ground that this fact can only be adjudicated by DNA Test. While recording this finding, the court below has not considered the provision as contained in Sections 50, 60 of the Evidence Act. It may be mentioned here that this issue about the parentage is directly involved in the suit and according to the decision of the Supreme Court reported in



AIR 1959 Supreme Court 914, it is for the plaintiff to adduce his evidence either directly or the fact which are admissible for giving opinion regarding the parentage of defendant no. 3. The court below has therefore, passed an order in the manner not permitted by law at this stage, particularly, when issues have only been framed.

Thus, this civil misc. application is allowed. The order passed by the court below is set aside and the court below is directed to proceed according to the law.

(Mungeshwar Sahoo, J.)

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