

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16161 of 2013

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1. Balkeshri Devi Wife Of Late Prashuram Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

.... Petitioner/s

Versus

1. Sarju Mishra S/O Laxmi Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

2. Jitendra Mishra S/O Late Yamuna Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

3. Santosh Mishra S/O Late Yamuna Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

4. Vinod Mishra S/O Late Yamuna Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

5. Sarvjeet Mishra S/O Late Yamuna Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar

6. Srikant Mishra S/O Sarju Mishra Resident Of Village - Barkagawan (Nagpura) P.S. - Simari, District - Buxar. At Present Resident Of Mohalla - Vivil Line, P.S. - Buxar Town, District - Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RANG NATH CHOUBEY, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-02-2017

Heard learned counsel for the petitioner.

By the impugned order the learned court below has allowed the prayer of the respondent no. 6 to be impleaded as party in the suit for partition filed by the plaintiff-petitioner. The learned counsel for the petitioner has submitted that though admittedly the respondent no.6 is one of the family members of the family of the petitioner but his claim as an adopted son of the plaintiff-petitioner has already been determined against him in an earlier suit. It has also



been submitted that the father of respondent no. 6 is already a party in the suit and therefore, also he is not required and entitled to be impleaded as party in the suit.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is evident that the suit for partition has been filed by the plaintiff-petitioner. From the genealogy table given in the main application, it is transparent that respondent no. 6 is one of the family members of the petitioner's family being the descendants of the common ancestors.

In that view of the matter, it is evincible that respondent no. 6 is entitled to be impleaded as party in the suit for partition. The submission that the claim of the respondent no. 6 as adopted son of the plaintiff-petitioner has already been decided against him was not sufficient in itself to reject his prayer for impleadment as party defendant in the suit for partition. However, the said question whether the claim of respondent no. 6 to be the adopted son of the plaintiff-petitioner still survives after the decision in the previous suit as asserted on behalf of the petitioner is to be considered by the court at appropriate stage and no such decision can be taken at the stage of deciding the prayer of the respondent no. 6 to be impleaded as party.

In this factual situation, this Court is not inclined to interfere with the impugned order. The application is, accordingly,



dismissed.

It is however observed that this court has not expressed any opinion on the merits of the claim of respondent no. 6 or the plaintiff-petitioner in that regard, which shall be decided by the court below in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
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