

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22213 of 2013

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Pushpa Devi D/O Late Kanhai Lal Dhokeshwar Dubey Katariar W/O Sri Shyam Lal Pathak Resident Of Mohalla Nai Sarak Kaatgachhi, P.O. Chandehaura, P.S. Civil Line, Dist.- Gaya

.... Petitioner

Versus

1. Makhan Lal Dhokeshwar Dubey Katariar S/O Late Hira Lal Dhokeshwar Resident Of Mohalla Nai Sarak Kaatgachhi, P.O. Chand Chaura, P.S. Civil Line, Gaya Town, Dist.- Gaya
2. Mala Devi D/O Late Kanhai Lal Dhokeshwar Dubey Katariar W/O Sri Manoj Lal Garail Resident Of Mohalla Nai Sarak Kaatgachhi, P.O. Chand Chaura, P.S. Civil Line, Gaya Town, Dist.- Gaya
3. Dinesh Kumar @ Dina Nath Mauar S/O Late Bhola Ji Resident Of Bahua Choura, P.S. Civil Line, Dist.- Gaya
4. Santosh Kumar Garai @ Babana Resident Of Katt Gachhi, P.S. Civil Line, Dist.- Gaya

.... Respondents

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Appearance :

For the Petitioner : Mr. TILAK SAO, Advocate.

For the Respondents : Mr. Shashi Shekhar Diwedi, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsels for the petitioner and the respondents.

2. The plaintiff of Title Suit No.217 of 2008/154 of 2006 pending in the Court of Sub-Judge-6th Gaya has filed this application for setting aside the order dated 16.07.2013 passed by learned Sub-Judge-6th whereby and whereunder the amendment petition of defendant-respondent no.1 was allowed.

3. The petitioner has filed the aforesaid suit for partition of the property mention in schedule A of the plaint with specific



pleading that after the death of Jawahar Lal Dokeshwar the properties mentioned in schedule-A of the plaint was inherited by the plaintiff and defendants. The father of plaintiff and defendant no.1 were full brothers and both parties have got unity of title and possession over the suit properties. The contesting defendant (respondent no.1) filed written statement and admitted the case of petitioner as regards their jointness of schedule-A property. In order to appreciate the said fact, the averment of para-7 of plaint and the written statement are cited here for reference.

Para-7 of plaint:-

“That after the death of Jawahar Lal Dhokeshwar, the properties detailed in schedule A of the plaint are joint property of the plaintiff and the defendants. The plaintiff and defendants have got unity of title and possession over the properties detailed in schedule A of the plaint. The properties detailed in schedule A of the plaint are referred as suit property.”

4. The defendant no.1 at para-9 of written statement has admitted the aforesaid fact. Para-9 of W.S. runs as follows:-

“That the averments made in para-7 of the plaint is also correct but the defendant no.2 is in possession of the entire share of Jawaharlal Dhakeshwer with the help of Sri Dinanath Mauar, son of Late Bholanath Mauar resident of Mohalla Bahuarchaura P.S. Civil Lines, District-Gaya”.

5. The plaintiff at para-10 of plaint has claimed four anna (25%) share in the suit property. The defendant no.1 on the other hand



at para-11 of his written statement has put counter claim against the defendant no.2 and the plaintiff by stating that after the death of Jawaharlal Dhakeshwer the plaintiff and defendant jointly inherited the entire property of Jawaharlal Dhakeshwer and there is unity of title and possession over the properties mentioned in schedule-A of the plaint. The agricultural land was long back sold away by Jawahar Lal Dhakeshwar during his life time. He has further stated that the said Jawaharlal Dhakeshwar also left behind three Bhar gold ornaments, 3 Kg. silver and utensils weighing about two quintals which are also liable for partition and are in possession and custody of the plaintiff and the defendant no.2. The defendant has thus claimed 50% share in the said property and the plaintiff and defendant no.2 having share to the extent of 25% each.

6. Thus, I find that the defendant (respondent no.1) in clear words without any ambiguity not only admitted the case of jointness of possession among themselves rather sought partition claiming 50% share in the landed property mentioned in schedule-A of the plaint and put a counter to partition the moveable property also which is mentioned at schedule A of the written statement. The partition suit was filed on 13.06.2006 and the defendant no.1 filed written statement on 20.01.2007. After four years of filing of written statement, the defendant has filed the amendment petition on 03.02.2011. The



defendant virtually wants to substitute his earlier written statement in the garb of amendment petition and depart from his admission of jointness.

7. For the reasons stated above, the impugned order allowing amendment is set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.11.2017
Transmission Date	17.11.2017

