

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1082 of 2016

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1. Ranjit Kumar Sah Son of Late Lelhoo Sah Resident of Mohalla- Mangal Bazar (Phalpatti), P.O. + P.S. & District-Katihar.... Appellant/s

Versus

1. Gopal Prasad Sah son of Late Lelhoo Sah Resident of Mohalla-Binodpur, P.O./P.S./District-Katihar
2. Ashok Kumar Sah Son of Late Lelhoo Sah Resident of Mohalla-Binodpur, P.O./P.S./District-Katihar
3. Meena Devi Wife of late Bhola Sah (S/o late Lelhoo Sah)
4. Rajesh Kumar Sah
5. Mukesh Kumar Sah Sons Late Bhola Sah (Sl. No. 3 to 5-resident of Mohalla-Mangal Bazar (Phalpatti), P.O. + P.S. + District-Katihar
6. Binda Devi Wife of Late Baidya Nath Prasad resident of Naya Bazar, P.O. Naya bazar, District-Chhapra
7. Durga Devi Wife of Dilip Kumar resident of Simraha, P.O. + P.S.- Simraha, District-Araria
8. Bimla Devi Wife of Binay Prasad resident of Gulzarbagh, P.O.- Gulzarbagh, Patna-800007 (Sl. No. 6 to 8-Daughter of Late Lelhoo Sah)
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Krishna Prasad

For the Respondent/s: M/s. Pravin Kumar Jaipuriyar & Anukriti Japuriyar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

6 19-12-2017

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 26.07.2016 passed in Title Suit No. 46 of 1996 by the learned Sub-Judge-V, Katihar.

The petitioner is defendant No.1 in Title Suit No. 46 of 1996. The petitioner filed a petition to grant permission to him to sale out 6 ½ decimal of land mentioned in lot-1, schedule-A of the plaint. The learned Sub-Judge dismissed the petition of the petitioner vide order dated 26.07.2016 holding that the petitioner has already sold 42 decimal of land to different persons before institution of the suit and petitioner has got no sufficient land in lot-1, schedule-A of the plaint.

The learned counsel for the petitioner submits that total area of lot-1, schedule-A of the plaint is 5.48 acres. The petitioner is entitled to 1/7th share in the land of lot-1, schedule-A



of the plaint and that comes approximately 76 decimal, the petitioner and his brothers and sisters would get 76 decimal land each but petitioner has sold only 42 decimal of land of his share. It is submitted that wife of the petitioner is suspect case of cancer and she has been under treatment for long. The petitioner is also an old person suffering from different ailments but the learned Sub-Judge has illegally rejected the petition of petitioner.

On the contrary, Mr. Pravin Kumar Jaipuriyar, the learned counsel for the respondent 1st set/ plaintiff, submits that if the petitioner is selling only five decimal of land, he has got no objection. It is further submitted that petitioner, being defendant No.1, has not adduced any evidence till date. Other defendants have already closed their evidence and the suit is lingering on account of laches on the part of petitioner/ defendant No.1.

Having considered the submissions of the parties and the fact that petitioner has sold only 42 decimal of land of total area of 5.48 acres of land mentioned in lot-1, schedule-A of the plaint, the petitioner is allowed to sale out five decimal of land from the land mentioned in lot-1, schedule-A of the plaint with a direction to learned Sub-Judge to dispose of the suit within six months from the date of receipt of this order without giving any unnecessary adjournment to any party.

Accordingly, the order dated 26.07.2016 is set aside and this Civil Misc. petition is allowed as aforesaid.

(Prabhat Kumar Jha, J)

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