

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17839 of 2013

=====

Sheo Parsan Singh

.... Petitioner/s

Versus

Kashi Nath Singh & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-05-2017 Heard the learned counsel, Mr. Ram Chanda Singh, for the petitioner.

Perused the impugned order dated 21.06.2013 passed by learned Sub Judge VI, Ara in Title Suit No.75 of 2004 whereby the learned Court below disposed of the application filed by the defendant petitioner under Section 151 of the Code of Civil Procedure for deciding the point of maintainability of partition suit.

It appears that plaintiff-respondent filed suit for partition claiming half share in the suit property on the ground that the original plaintiff are the two daughters. The defendants petitioner filed written statement denying the parentage of both the original plaintiff. According to the defendants petitioner, they are not the daughter of Nageena Singh. Thereafter, an application was filed under Section 151 CPC by the defendant petitioner praying for



deciding the point that the partition suit is not maintainable unless the original plaintiffs get themselves declared as the daughter of Nageena Singh. The learned trial Court by the impugned order held that the issues have already been framed and with regard to the point raised by the petitioner also issue have been framed, therefore, it is desirable that all the issues be decided at a time.

According to the Order XIV Rule 2, the Courts is required to pronounce judgment on all issues unless the preliminary issues relates to the jurisdiction of the Court or a bar to the suit created by any law. The maintainability of the suit is not covered under Order XIV Rule 2 sub Rule 2 Clause (a) or clause (b). This matter as to whether the partition suit is maintainable or that as to whether the plaintiffs are the daughters of Nageena Singh or not can only be decided after recording the evidences of the parties. Therefore the learned Court below has rightly held that an issue has already been framed with regard to this point which shall be decided later on.

Thus, I find no jurisdictional error in the impugned order. Accordingly, this writ application has got no merit and thus it is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

U			
---	--	--	--

