

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21472 of 2012

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Paras Kumar @ Parasnath

.... Petitioner/s

Versus

Kamlesh Prasad & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 11-09-2017 **1.** Heard the learned counsel, Mr. Manoranjan Kumar, for the petitioner and the learned senior counsel, Mr. S. S. Dwivedi, for the respondent No.1.

2. This writ application has been filed by the petitioner petitioner under Article 227 of the Constitution of India challenging the order dated 01.10.2012 passed by Sub Judge V, Muzaffarpur in Misc. Case No.7 of 2011 whereby the learned Sub Judge has rejected the Misc. case filed by the petitioner under Section 22 of the Hindu Succession Act and Section 4 of the partition Act.

3. The learned counsel for the petitioner submitted that the ancestor of the petitioner had filed Partition Suit No.144 of 1970 wherein the residential building was also as subject matter of partition. The said partition suit is still pending but in the



meantime, one of the brother of the petitioner sold the property, i.e., portion of residential building to the respondent No.1 by registered sale deed dated 27.04.2011 and, therefore, the present petitioner filed the Misc. case under Section 22 of the Hindu Succession Act and Section 4 of the Partition Act but the Court below relied upon a Cora Batwara deed and held that application under Section 22 and Section 4 of the Partition Act is maintainable only by a co-sharer and not by co-heir. According to the learned counsel, the Court below could not have relied upon the cora Batwara deed which is of the year 1992 as the said cora deed is under challenge in the partition suit of the year 1970 and the Court below could not have also relied upon the judgment passed in Title Suit No.308 of 2003 because the petitioner was not a party in the said suit. The Court below also wrongly relied upon the mutation papers and rent receipt etc and held that there had been complete partition between the parties which is incorrect. On these grounds, the learned counsel submitted that the impugned order be set aside and the Misc. Case filed by the petitioner be allowed.

4. On the other hand, the learned senior counsel, Mr. S. S. Dwivedi, appearing on behalf of the respondent submitted that the partition suit filed by the petitioner's ancestor is of the year 1970 and in that partition suit, the parties partitioned all the suit



properties belonging to the family wherein this residential house was also partitioned between the co-sharer and a cora Batwara was prepared in the year 1992. Since there was complete partition in the year 1992, this Misc. case was not maintainable in view of the decision of the Patna High Court reported in **2004(2)PLJR 190**. According to the learned counsel, the Court below relying on the documentary evidences produced by the respondent No.1 came to the conclusion that there had been complete partition as such the Misc. case is not maintainable, therefore, this Court in exercise of jurisdiction under Article 227 of the Constitution of India has no jurisdiction to substituted its own finding as if this Court is sitting in appeal against the order.

5. Perused the impugned order. It appears that various documentary evidences were produced by the respondent No.1 in Misc. case iIn view of the statement made in the objection relying the maintainability which has been annexed as Annexure '3' to the writ application.

6. This court in the case of **Ram Udar Rai Vs. Ram Chandra Rai 2004 (2) PLJR 190** has held that once the transferee has been completed, transferee acquires title over the land and the document has to be voided before the relief is granted in terms of



Section 22. After completion of transfer, the sell is voidable and not void, therefore, unless the document is declared to be avoidable, no relief can be granted and that can be granted only on a regular suit to be instituted for declaring the document to be void. Admittedly, in the present case, the sell is already completed in the year 2011. From perusal of the impugned order, it appears that the Court below considered the documentary evidences produced by the opposite party and then recorded the finding that there had been complete partition because the said cora partition between the parties of the joint families was relied on by the Civil Court and another suit being Title Suit No.308 of 2003.

7. The Hon'ble Supreme Court in the case of *Jai Singh Vs. Municipal Corporation of Delhi (2010) 9 SCC 385* has held that 'the High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India cannot re-appreciate the evidence and substitute its own finding to supervise the order passed by the Court below. Generally, the High Court should allow to stand the finding of the Court below recorded on the basis of the evidences.' In the present case, from the impugned order, it appears that the Court below recorded the finding that the parties have partitioned the property and, therefore, a co-sharer cannot



maintain the application, therefore, cannot be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India. Moreover, this application under Section 22 of the Hindu Succession Act was filed before the transferee Court where the partition suit was transferred and not before the original Court in which the Misc. case should have been filed.

8. In view of the above facts and circumstances of the case, in my opinion, no case for interference in supervisory jurisdiction is made out and thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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