

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.161 of 2016

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1. Md. Ali @ Mahmad Ali @ Mahmmad Ali Mian @ Bhayee Ji Mian Son of Late Kasim Mian, resident of Village Motidhapar, Tola Bankatwa, P.O. Brindaban, P.S. Chanpatia, District West Champaran Petitioner

Versus

1. Jumaddin Mian
2. Samsuddin Mian, Both are sons of Habib Mian, and resident of Bankatwa, Jadodhapar, Chanpatia, P.O. + P.S. Chanpatia, District West Champaran.
3. Bibi Rabiya Khatoon, wife of Jahagir Mistri, resident of Miapur, Nilagali Badai Tola, P.S. Bairiya, District West Champaran.
4. Idrish Mian
5. Nasrool Mian Both are sons of Late Salim Mian.
6. Most. Mehroom Nesa, wife of Late Salim Mian
7. Ajrool Mian, son of late Salim Mian
8. Hassan Jan Mian, Son of Late Rasheed Mian
9. Kalim Mian, son of Late Makdoom Mian all are resident of village Motichaper, Tola Bankatwa, P.O. Yadochapar, P.S. Chanpartia, District- West Champaran Respondents

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Appearance :

For the Petitioner : Mr. Akhileshwar Kumar Shrivastva, Adv.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

4 28-11-2017

Heard both sides.

The petitioner-plaintiff has filed this civil miscellaneous petition to set aside the order, dated 24.11.2015, by which the review petition of the petitioner-appellant to review the order, dated 13.03.2014, passed in Title Suit No. 230 of 2012, was dismissed and the amendment petition of the petitioner-plaintiff was rejected.

The petitioner-plaintiff has filed suit for declaration of title and also prayed to declare that the sale deed executed by Bibi Rabiya Khatoon, defendant no. 3, in favour of defendants 1 and 2 on 13.07.2012 is illegal as Bibi Rabiya Khatoon did not have any title over the land to execute the sale deed.



The learned counsel for the petitioner-plaintiff submits that the petitioner-plaintiff filed plaint and stated in paragraph 4 of the plaint that Makdoo Mian, son of Malang Mian got two sons, namely, Saleem Mian and Kalim Mian is defendant no. 9. Saleem Mian got two wives, namely, Sairun Khatoon, and Saleem Mian got three children from his first wife Sairun Khatoon. Mehrun Nisa was the second wife of Saleem Mian and Saleem Mian also got two sons from his second wife, Mehrun Nisa, who are defendants 6 and 7. Children of Sairun Khatoon, the first wife of Saleem Mian, are defendants 3, 4 and 5. It is, further, submitted that the defendants second and third sets filed written statement and disclosed that defendant no. 3, Bibi Rabiya Khatoon, is not the daughter of Saleem Mian, but, Bibi Rabiya Khatoon is daughter of Sairun Khatoon from her first husband. Sairun Khatoon was married to somewhere else and she got the daughter, namely, Bibi Rabiya Khatoon. When Bibi Rabiya Khatoon could not pull on well with her first husband she deserted the house of first husband along with her daughter and solemnized marriage with Saleem Mian. Thereafter, Saleem Mian got two sons from his wife, Sairun Khatoon, and, therefore, the plaintiff wanted to make amendment in paragraph 3 of the plaint as Bibi Rabiya Khatoon is not the daughter of Saleem Mian. But, the learned Sub Judge illegally rejected the petition of the petitioner-plaintiff on the ground that the plaintiff-petitioner wanted to withdraw the admission by introducing such amendment.

I find no illegality in the order. It is evident from the perusal of paragraph 4 of the plaint that the plaintiff admitted that Saleem Mian was firstly married with Sairun Khatoon and Saleem



Mian got three children, who are defendant no. 3, Bibi Rabiya Khatoon, defendant no. 4, Idrish Mian, and defendant no. 5, Nasrool Mian, but, by amendment the plaintiff wanted to withdraw this admission that Bibi Rabiya Khatoon is the daughter of Saleem Mian. The plaintiff wanted to introduce Bibi Rabiya Khatoon as the daughter of first husband, unknown person, of Sairun Khatoon.

Having considered this fact, I find no jurisdictional error or illegality in the order, dated 24.11.2015, and, accordingly, the civil miscellaneous petition is **dismissed**.

(Prabhat Kumar Jha, J)

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