

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.360 of 2017

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1. Laxmi Mahto @ Laxmi Narain Mahto,
 2. Chhathu Mahto, Both are sons of Late Ram Swaroop Mahto, residents of Village- Mianchak, P.S.- Town Begusarai, District- Begusarai.
 3. Sattan Mahto, Son of Late Ram Kishun Mahto,
 4. Surendra Mahto, Son of Late Ram Kishun Mahto, Both are residents of Village- Chandaur, P.S.- Bhagwanpur, District- Begusarai.

.... Appellant/s

Versus

1. Tuntun Mahto, son of Late Ram Kishun Mahton,
2. Jai Jai Ram Mahto, son of Late Maheshwari Mahton, Both residents of Village- Chandaur, P.S.- Bhagwanpur, District- Begusarai.
3. Kaushalya Devi, W/o Ram Das Mahton, D/o Parmeshwari Mahton, resident of Village- Makhanchak, P.S.- Bakhri, District- Begusarai.
4. Phool Pari Devi, W/o Ram Bilash Mahton, resident of Village- Makhanchak, P.O. & P.S.- Bakhri, District- Begusarai.
5. Lali Devi, W/o Raj Kumar Mahton, resident of Village and P.O. Samsa, P.S.- Bakhri, District- Begusarai, at present resident of Village- Mianchak, Post Office, Begusarai, Police Station- Begusarai, Pergana- Malko, District- Begusarai.
6. Iso Mahton, son of Late Kailu Mahton,
7. Ram Pari Devi, W/o Late Iso Mahto,
8. Naresh Mahton, Son of Late Iso Mahto, All are residents of village- Mianchak, Post Office, Begusarai, Police Station- Begusarai, Pergana- Malki, District- Begusarai.
9. Ram Rati Devi, W/o Ram Pd. Mahton, resident of Village- Parri, P.O. & P.S.- Alauli, District- Khagaria.
10. Kalo Devi, W/o Manoj Mahto, resident of Village & P.O. Samsa, P.S.- Naokothi, District- Begusarai.
11. Meena Devi, W/o Ashok Mahton, resident of Village and P.O.- Tilrath, P.S.- Barauni, District- Begusarai.
12. Maksudan Mahton,
13. Tuntun Mahton,



14. Munna Mahton,
15. Arvind Mahton @ Naga,
16. Bhushan Mahton, All are sons of Late Bishundeo Mahton,
17. Kapia Devi,
18. Nirmala Devi,
19. Urmila Devi, All are daughters of Late Bishundeo Mahton,
20. Sarjug Mahton,
21. Subodh Mahton,
22. Rajendra Mahton, All are sons of Late Kailu Mahton,
23. Ram Nandan Mahton, Son of Late Chandradeo Mahton,
24. Sudama Devi, W/o Ram Sagar Mahton,
25. Manoj Kumar,
26. Pappu Kumar,
27. Pawan Kumar,
28. Lalita Kumari,
29. Savita Kumari, All are sons & Daughters of Ram Sagar Mahton,
30. Reshma Devi, Wife of Late Chanando Mahton,
31. Mostt. Sundari Devi, W/o Late Gena Mahton,
32. Sita Devi, W/o Late Punit Mahton,
33. Manju,
34. Ranjoo, both daughters of Late Punit,
35. Ram Balak Mahton,
36. Ram Dayal Mahton,
37. Ashok Mahton,
38. Ram Bilash Mahton, both sons of Late Phekan Mahton,
39. Manakia Devi, Wife of Late Phekan Mahton,
40. Manakiya Devi, W/o Domi Mahton, All are residents of Village- Mianchak, Begusarai, P.S. and District- Begusarai.
41. Daibati Devi, W/o Bachchan Mahton, resident fo Village- Tilrath, P.s.- Barauni, District- Begusarai.
42. Ram Sakhi Devi, W/o Brahmdeo Mahton, of Village- Chilmil, P.S. & District- Begusarai.
43. Deosakhi Devi, W/o Jagdish Mahton, resident of Pirnagar, P.S. and District- Begusarai.
44. Kunti Devi, W/o Ram Rohit Mahton, at Suryapura, P.S.- Bhagwanpur, District-



Begusarai.

45. Shri Charan Singh,

46. Rajendra Singh, Both are sons of Late Mahabor Singh, residents of Village- Gara Pergana Naipur Thana- Bhagwanpur, District- Begusarai.

47. Palti Devi, W/o Jai Jai Ram Mahton, D/o Late Mahabir Singh, resident of Village- Khadiyahi, P.S.- (Thana) Bibhutipur, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Prakash Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2017

Heard learned counsel for the petitioners.

The plaintiffs in the suit has filed the present application questioning the legal acceptability of the impugned order by which the learned court below has allowed the prayer of the defendants for cross examination of the witnesses examined on behalf of the plaintiffs and defendant 1st set. The impugned order has been passed on 20.10.2016 but the present application has been filed on 25.02.2017.

The matrix of facts discloses that the suit for partition was filed by the plaintiff-petitioners in the year 1986. It is the stand on behalf of the petitioners that the evidence of both the plaintiffs and the defendants was completed in the year 2006 itself. However, the fact has not been disputed that the intervenor-defendants have been made



parties on 12.04.2013 in the suit. It is not the case on behalf of the petitioners that the said order has been challenged by the petitioners. Thereafter, the written statement filed by the intervenor-defendants was finally accepted on 20.11.2014. It is again not the case on behalf of the petitioners that the acceptance of the written statement filed by the intervenor-defendants has ever been challenged. Though, the petition filed by the intervenor-defendants praying for opportunity of cross examining the witnesses of the plaintiffs and the defendant 1st set has earlier been rejected on technical ground but thereafter the intervenor-defendants again filed the petition which has been allowed by the impugned order.

The learned court below has rightly come to the conclusion that in an adversarial system of justice dispensation the party should ordinarily be allowed the opportunity to participate in the proceeding unless compelled by express and specific provision of law. This Court finds that the learned court below has allowed the petition after imposing cost upon the defendants with condition intended for early disposal of the suit. One of the conditions is the direction to the plaintiffs to produce their witnesses on day to day basis failing which other parties have been made entitled to compensation. This Court, therefore, does not find that the learned court below has committed any illegality in passing the impugned order granting opportunity to



the intervenor-defendants to participate in the proceeding of the suit in accordance with law.

The application is, accordingly, dismissed.

However, it is observed that the learned court below shall maintain the time frame and will expeditiously proceed with the hearing of the suit keeping in view the fact that the suit has been filed for partition and is pending since 1986.

(V. Nath, J)

Devendra/-

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