

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3816 of 2013

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Rajendra Narain Singh S/O Late Shashi Shekhar Prasad Sinha R/O Vill-Thatia,
P.O.Rosera, Distt-Samastipur, Presently Resident Of 186, Pataliputra Colony,
P.O.&P.S.Patliputra, Distt-Patna

.... Petitioner

Versus

1. Birendra Narain Singh S/O Late Shashi Shekhar Prasad Sinha R/O Vill-Thatia,
P.O.Rosera, Distt-Samastipur, Presently Resident Of 186, Patliputra Colony,
P.O.P.S.Patliputra , Distt-Patna
2. Omkar Nath S/O Late Kailashpati Sahay R/O Vill-Chakiya Pali, P.S.Basantpur,
Distt-Saran
3. Hari Kishore Singh S/O Late Mithileshwar Prasad Singh R/O
Vill&P.O.Sukhpur, P.S.Supaul, Distt-Saharsa(Supaul)
4. Patliputra Co-Operative House Construction Society Ltd, P.O.&P.S.Patliputra,
Distt-Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. BINOD KUMAR SINGH

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-02-2017

Heard learned Counsel for the parties.

2. The present application under Article 227 of the Constitution of India has been filed questioning the legal sustainability of the order dated 28.1.2013 passed in Title (Partition) Suit No. 11 of 1983, by which the learned court below has allowed the prayer of defendant No. 5 for appointment of survey knowing Pleader Commissioner for carving out the share allotted to him in the preliminary decree.

3. The matrix of facts discloses that T.P.S. No. 11 of 1983 was filed by the plaintiff-petitioner for partition after grant of reliefs against the sale deeds in favour of defendant No. 1 and defendant No. 5 respectively with regard to the properties mentioned in Schedule of the



plaint. However, in the said suit a compromise petition was filed on 30.9.1983 by the parties and a preliminary decree was passed on 14.1.2010. It appears from the impugned order that the properties mentioned in Schedule 'A' of the compromise petition were given to defendant No. 5 of the suit. Accordingly defendant No. 5 filed the petition dated 31.7.2012 praying for appointment of a survey knowing Pleader Commissioner for carving out the share allotted to the defendant No. 5 in the preliminary decree and by the impugned order the learned court below has allowed the petition of the defendant No. 5 and has directed for appointment of the Pleader Commissioner as prayed.

4. After considering the submissions and the materials on record including the impugned order, it is manifest that factum of preliminary decree passed in T.P.S. No. 11 of 1983 on the basis of compromise petition has not been denied by the plaintiff who has contested the prayer as made by the defendant in his petition dated 31.7.2012. The objection of the plaintiff-petitioner resisting the prayer of defendant No. 5 is only on the basis that he has filed Testamentary Suit No. 1 of 2011 seeking grant of probate for the **will** executed in his favour by his mother and, therefore, the partition of the suit land cannot be done. It appears from the impugned order that the properties mentioned in Schedule 'A' of the compromise petition, which have been allotted to defendant No. 5, is not the subject matter of the Testamentary Suit No. 1 of 2011 said to be pending before this Court. The learned Court below has also noticed the joint submission on behalf of the parties that there can be more than one final decree in a suit for partition.

5. This Court, therefore, does not find that the learned Court



below has committed any illegality or irregularity in passing the impugned order. Further, it has been rightly observed by the learned court below that defendant No. 5-respondent is unnecessarily being deprived of the fruits of the decree in his favour.

6. This petition sans merit is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	31.07.2017
Transmission Date	N/A

