

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No. 17 of 2015

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Ganga Prasad Sah Son of Late Thakur Prasad Sah, Resident of Mohalla Kasba Mahavir Chok Muriyari Tola, P.S. Kasba, P.O. Kasba, District Purnea.

.... Petitioner

Versus

1. Sarvan Kumar Sah Son of Late Motilal Sah, Resident of Mohalla Kasba Mahavir Chok Muriyari Tola, P.S. Kasba, P.O. Kasba, District Purnea.
2. Bhanu Devi W/O Vishnu Prasad Sah daughter of Late Motilal and deceased plaintiff Nirmala Devi, Resident of Mohalla Purani Ha, Gulabagh, P.O. Gulab Bagh, P.S. Sadar, District Purnea.
3. Satyabhama Devi W/O Sri Binod Prasad Sah D/O Late Motilal Sah and deceased plaintiff Nirmala Devi, resident of Kishanganj Durgi Basti Road, P.S. + P.O. District Kishanganj.
4. Purnima Devi W/O Sri Basu Prasad Sah D/O Late Motilal Sah and deceased plaintiff Nirmala Devi, resident of Mohalla Kishanganj Dangi Basti Road, P.S. + P.O. District Kishanganj.
5. Namita Devi W/O Sri Raja Prasad Sah, D/O Late Motilal Sah and deceased plaintiff Nirmala Devi, resident of Naima Tota, near School Kasba, P.S. & P.O. Kasba, District Purnea.
6. Mahesh Lal Sah,
7. Rajendra Prasad Sah, Resident of Mohalla Kasba, Durgasthan, P.S. Kasba, P.O. Kasba, District Purnea.
8. Bina Devi W/O Mohan Lal Sah, Resident of Mohalla Khataghat, Jalalgarh, P.O. Jalalgarh, P.S. Jalalgarh, District Purnea.
9. Rani Devi W/O Ram Prasad Sah, Resident of Mohalla Kanharia Chowki Mahna, P.S. Sadar, P.O. Kanharia Chowki, District Purnea.
10. Bhanoo Devi W/O Awadhesh Prasad Sah, Nos. 6 to 10 are sons and daughters of Late Parmeshwar Sah. Resident of Village Hafla, P.S. Katihar, P.O. Katihar, District Katihar.
11. Narayan Sah S/O Girlli Sah, Resident of Mohalla Kasba, Mahavir Chowk, Muriyari Tola, P.S & P.O. Kasba, District Purnea.
12. Most. Kanti Devi W/O Late Ramanand Sah
- 12 (i) Manoj Prasad Sah
- 12 (ii) Binodanand @ Mintu Sah
- 12(iii) Kudama Nand @ Kundan Sah Nos. 12(i) to 12(iii) are sons of Late Ramanand Sah, All resident of Mohalla Kasba, Mahavir Chowk, Muriyari Tola, P.S & P.O. Kasba, District Purnea.
- 12(iv) Bulbul Devi W/O Upendra Mahto D/o Late Ramanand Sah, resident of Village Pratapganj, P.S. Pratapganj, District Supaul.
13. Kamli Devi W/O Karu Sah, resident of Mohalla Chandni Chowk, P.S. & P.S. Kasba, District Purnea.
14. Tarni Devi, Wife of Saggu Baidya
15. Most. Rukmini Devi W/O Late Ganga Prasad Sah, Resident of Village Madarghat, P.S. Kasba, District Purnea.
16. Shashi Devi W/O Bishnu Prasad Sah, D/O Late Ganga Prasad Sah, resident of Village Kasba, District Purnea.
17. Neelam Devi W/O Birendra Prasad Sah D/O Late Ganga Prasad Sah, resident of Champa Nagar, P.S. K. Nagar, District Purnea.



18. Chandrakala Devi W/O Sri Ashok Kumar Nayak, D/O Late Ganga Prasad Sah, resident of Village Raniganj, P.S. Raniganj, District Araria.
19. Indrakala Devi W/O Ashok Prasad Sah, D/O Late Ganga Prasad Sah, resident of Village Kasba, P.S. Kasba, District Purnea.
20. Kiran Devi W/O Pramod Mandal, D/O Late Ganga Prasad Sah, resident of Village Raniganj, P.S. Raniganj, District Araria.
21. Purnima Devi W/O Shushil Pradhan, D/O Late Ganga Prasad Sah, resident of Village Raniganj, P.S. Raniganj, District Araria.
22. Kabita Devi W/O Arun Prasad, D/O Late Ganga Prasad Sah, resident of Pratapganj, P.S. Pratapganj, District Supaul
23. Most Savika Devi W/O Late Lalit Prasad
24. Vikram Kumar
25. Vishal Kumar
26. Bipin Kumar Nos. 24-26 are Sons of Late Lalit Prasad All resident of Village Madarghat, P.S. Kasba, District Purnea.
27. Most. Tilakma Devi W/O Late Sitaram Sah,
28. Satish Prasad
29. Nirmal Prasad
30. Sudarshan Sah
31. Prem Prasad Sah Nos. 28-31 are sons of Late Sita Ram Sah All residents of Madaraghat Kasba, P.S. Kasba, District Purnea.
32. Heera Lal Sah S/O Late Thakur Prasad Sah,
33. Dilip Prasad Sah S/O Late Mangan Lal Sah
34. Ashok Prasad Sah S/O Late Mangan Lal Sah, Nos. 32-34 are Resident of Tola Madurghat, P.S. Kasba, P.O. Kasba, District Purnea.
35. Sunil Prasad Sah S/O Late Mangan Lal Sah Resident of Tola Madarghat, P.S. Kasba, District Purnea.
36. Pradeep Prasad Sah
37. Shankar Prasad Sah Both Sons of Late Hari Kishun Prasad Sah Both residents of Tola, Madarghat, P.S. Kasba, P.O. Kasba, District Purnea.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Abbas Haider, Adv.
Mr. Ranjay Kumar Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER**

- 5 22-06-2017 1. Heard learned counsel for the petitioner and perused the record.
2. This revision petition has been preferred against the order dated 19.11.2014 passed by the learned Sub Judge-5th



Purnea in Title Suit No 228 of 2002 by which he rejected the petition filed under Order 7 Rule 11 of the Civil Procedure Code.

3. One Nirmala Devi filed Title Suit No 228 of 2002 for partition of disputed lands and petitioner as well as several other persons were made defendant to that suit. The defendants appeared in that suit and issues were framed. However, during pendency of the aforesaid suit, petition under Order 7 Rule 11 of the CPC was filed on behalf of the petitioner stating therein that the father (Nathu Sah) of the original plaintiff, namely, Nirmala Devi had filed partition suit bearing Partition Suit No. 43 of 1979 but the same was dismissed in default and after that the wife of Nathu Sah filed miscellaneous case for restoration of the above stated Title Suit No. 43 of 1979 but the aforesaid miscellaneous case was also dismissed. However, again one Rani Devi, the daughter of aforesaid Nathu Sah and full sister of plaintiff filed Title Suit No 180 of 1992 for partition of the disputed lands but the aforesaid suit was dismissed and while dismissing the suit, the concerned court held that Nathu Sah, father of aforesaid Rani Devi as well as original plaintiff, namely, Nirmala Devi, has already transferred his share to one Thakur Prasad. The order of the Sub Judge passed in Title Suit No 180 of 1992 was confirmed up to this court in second appeal and after that original plaintiff, namely,



Nirmala Devi brought the present suit and that is why the suit of the Nirmala Devi is not only barred by principles of res judicata but also the said Nirmala Devi had got no cause of action to file the present suit. The learned court below rejected the aforesaid petition filed under Order 7 Rule 11 of the CPC on the ground that aforesaid petition was filed at belated stage.

4. Learned counsel appearing for the petitioner submits that almost all the above stated facts are admitted because admittedly, the father of original plaintiff had filed title suit which was dismissed in default and subsequently, own sister of original plaintiff, Nirmala Devi filed another partition suit but the same was also dismissed and it was held that the father of original plaintiff Nirmala Devi as well as the plaintiff of Title Suit No 180 of 1992 had no share in the disputed plots as he had already transferred his share and, therefore, the aforesaid fact clearly goes to show that the present suit that is Title Suit No 228 of 2002 is barred by principles of res judicata and furthermore, the original plaintiff of Title Suit No 228 of 2002 had got no cause of action to file Title Suit No 228 of 2002.

5. In my view, even if the sister as well as father of original plaintiff had filed title partition suit and the same were dismissed then also, the aforesaid fact can be proved only in



course of trial and the above stated question is a mixed question of law and fact which can be decided after taking evidences of both the parties. No doubt, the learned court below rejected the petition filed on behalf of the petitioner on erroneous ground but in my view, the court below came to right conclusion and, therefore, I do not find any merit in this revision petition. Accordingly, this revision petition stands dismissed and the impugned order dated 19.11.2014 is hereby confirmed. However, the learned Sub Judge-V, Purnea/ concerned court should expedite the hearing of Title Suit No. 228 of 2002 and dispose of the same as early as possible preferably within nine months from the date of receipt/ production of copy of this order.

(Hemant Kumar Srivastava, J)

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