

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22062 of 2013

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Jogawali Devi

.... Petitioner/s

Versus

Rameshwar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 21-09-2017 **1.** Heard the learned counsel, Mr. Harishankar Rai, for the petitioner and the learned counsel, Mr. Nagendra Rai, for the respondent No.2.

2. It appears that the plaintiff respondent No.1 filed partition suit claiming 1/3rd share in the suit property. In the said suit, the present petitioner filed intervention application which was allowed and the petitioner was made defendant No.2. During the evidence, some witness stated that petitioner is not the daughter of the defendant No.2 and, therefore, the present petitioner filed an application for DNA test. By the impugned order dated 20.05.2013, the learned Munsif-IIIrd, Saran at Chapra in Partition Suit No.119 of 2006 rejected this application.

3. The learned counsel for the petitioner submitted that since evidence has come in this partition suit that she is not the



daughter of the defendant No.2, it is necessary to determine as to whether she is the daughter of defendant No.2- respondent No.2 or not, therefore, to determine this fact, the DNA test is necessary but the learned Court below without considering the evidence of one of the witness who has admitted that the petitioner is the daughter of the respondent No.2 has rejected the application.

4. On the other hand, the learned counsel, Mr. Nagendra Rai, for the respondent No.2 submitted that it is a simple suit for partition filed by the plaintiff respondent No.1 claiming 1/3rd share, therefore, whether the defendant No.23 is the daughter of defendant No.2 is entirely foreign question because the defendant No.3 cannot even file counter claim against the defendant No.2 in the present suit.

5. It is admitted fact that the petitioner was added as defendant No.3 and she is claiming that she is the daughter of defendant No.2 whereas the defendant No.2 has filed written statement stating that he has no either male or female. Now, therefore, this a dispute between defendant intersee.

6. In the case of *Kasturi vs. Iyyamperumal 2005 (6) S.C.C. 733*, the Hon'ble Supreme Court interpreted the provision as contained in Order 1 Rule 10(2) of the Code of Civil Procedure



vide paragraph 16 has held that ‘from a plain reading of expression “all the questions involved in the suit” used in Order 1 Rule 10 (2) C.P.C., it is abundantly clear that the Legislature clearly meant that only the controversies raised as between the parties to the litigation must be gone into, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiffs or the defendants intersee or question between the parties to the suit and third party.’

7. Now, therefore, the dispute between the defendant No.3 who is petitioner and defendant No.2 is the intersee dispute between the defendants and the plaintiff has got no relation with this dispute. Nor, the plaintiff share is affected by decision of this dispute intersee between the defendants.

8. It may be mentioned here that even the defendant No.3-petitioner cannot file a counter claim against the defendant No.2 in this partition suit as has been held by the Hon’ble Supreme Court reported in **2007(1) PLJR 232 SC**. Thus, in no case the petitioner’s claim for DNA can be allowed in this partition suit to resolve the dispute between defendants intersee. Thus, I find no



reason to interfere with the impugned order in exercise of supervisory jurisdiction and, therefore, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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