

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1015 of 2016

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1. Dewanti Devi Wife of Sri Binay Sharma resident of Lock No. 11, East Railway Gumti, P.S. - Ara Nawada, District - Bhojpur... Appellant/s

Versus

1. Sheela Devi wife of Late Bal Mukund Bishwakarma resident of Sakaldiha More, Ali Nagar Chowk, Chandauli, P.S. - Chandauli, District - Chandauli (U.P.).

2. Abhinav Bishal

3. Abdhishhek Ajasu

4. Aniket Amit

All sons of Late Bijay Kumar Sharma and Late Urmila Devi Nos. 2 to 4 are residents of Jai Prakash Nagar, New Mudhukum, Ranchi (Jharkhand).

5. Anubhav Anu wife of Parveen Kumar Sharma, daughter of Late Bijay Kumar Sharma resident of Qr. No. B/247, Sector No. 2, Near Rajendra Bhawan, Dhurwa, Ranchi, Jharkhand.

6. Deoki Prasad Sharma

7. Jitara Prasad Sharma Both sons of Late Munshi Mistri At present residents of Lock No. 11, East Railway Gumti, P.S.- Ara Nawada, P.O. - Nawada, District - Bhojpur.

8. Nagendra Sharma son of Late Kishore Chand Bishwakarma

9. Satendra Sharma

10. Binod Sharma

11. Pramod Sharma

12. Kallu Sharma All sons of Nagendra Sharma Nos. 8 to 12 residents of Qtr. No. S/226, Dalmia Nagar, Dehri-On-Sone, District - Rohtas.

13. Shanti Devi wife of Late Dr. Satyadeo Sharma, D/o Late Tilak Chand Sharma resident of Village - Prahia, P.O. - Garkha, P.S.- Garkha, District - Chapra.

14. Kunti Devi wife of Sujadar Sharma, D/o Tilak Chand Sharma At present resident of Jamalpur Kudhwa, P.S. - Mahamdabad, P.O. - Bandikala, District - Ajamgarh, at present Mou (Uttar Pradesh).

15. Malti Devi wife of Paramhansh Sharma D/o Late Tilak Chand Sharma resident of Qr. No. 254, B.C.C.L. Township, Koila Nagar, Dhanbad, P.S. - Saraikela, District - Dhanbad (Jharkhand).

16. Awadhesh Kumar Sharma

17. Ajodhya Kumar Sharma

18. Suresh Kumar Sharma

19. Mahesh Kumar Sharma Nos. 16 to 19 are sons of Late Sitaram Sharma

20. Deepak Kumar Sharma

21. Ajay Kumar Sharma

22. Amar Kumar Sharma Nos. 20 to 22 are sons of Late Kesho Prasad Sharma Block No. 11, East Railway Gumti, P.S. - Nawada, P.O. Nawada Ara, District Bhojpur.

23. Indra Kumar Sharma

24. Sheo Shankar Sharma

25. Deva Nand Sharma Nos. 23 to 25 are sons of Late Mita Ram Sharma

26. Madhuri Devi wife of Satendra Prasad, D/o Late Mita Ram Sharma

27. Uma Devi W/o Ashok Kumar, D/o Late Mita Ram Sharma Nos. 23 to 27 are residents of Lock No. 11, East Railway Gumti, P.S. - Ara Nawada, P.O. - Nawada, Ara, District - Bhojpur.

28. Debbrat Sharma

29. Priya Brat Sharma Nos. 28 to 29 are sons of Late Ram Jiwan Sharma

30. Smt. Rukmani Devi wife of Manoj Kumar Sharma, D/o Late Ram Jiwan Sharma

31. Rajni Kumari wife of Ashok Kumar Sharma, D/o Late Ram Jiwan



Sharma

32. Rita Kumari wife of Vijay Kumar Sharma, D/o Late Ram Jiwan Sharma
Nos. 28 to 32 are residents of Lock No. 11, East Railway Gumti, P.S. - Ara
- Nawada, P.O. - Ara - Nawada, District - Bhojpur..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr. Jitendra Kishore Verma

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

6 09-01-2018

Heard both sides.

The petitioner filed this petition against the order dated 17.06.2016 passed in Title Suit (F.D.) No. 46 of 1988 by which the petition of Nagendra Sharma and others to carve out 1/6th share of daughters of Tilak Chand Sharma from 7/36th share of Tilak Chand Sharma has been allowed.

The plaintiff filed the suit for partition of properties mentioned in schedule-Ka and schedule-Kha of the plaint. The defendant No.1, Tilak Chand Sharma, filed written statement stating therein that the properties mentioned in schedule-Ka and schedule-Kha have already been partitioned among the plaintiff and defendants. The defendant No.1 also filed amendment petition for amendment in the written statement on 15.03.1997 that defendant No.1, Tilak Chand Sharma gifted his share by registered deed of gift dated 11.01.1994 in favour of his daughter, Dewanti Devi, the petitioner. The amendment was allowed. During the pendency of the suit, Tilak Chand Sharma died on 30.03.1997 and his all six daughters and their legal heirs have been substituted in place of Tilak Chand Sharma. The suit was decreed. The plaintiff was found entitled to get 7/36th share in the property mentioned in schedule of the plaint. The defendant No.1, Tilak Chand Sharma, and his legal representative were found to get 7/36th share in the suit property. Three daughters of Tilak Chand Sharma and their legal representatives filed petition on 06.07.2013 that out of share of Tilak Chand Sharma their shares may be carved out by



appointing Pleader Commissioner. Dewanti Devi, one of the daughters of Tilak Chand Sharma, who was arrayed as defendant No. Jh in the suit, filed rejoinder stating therein that during his lifetime Tilak Chand Sharma gifted his entire share by a registered deed of gift dated 11.03.1994 to her and she came in possession over the entire share of Tilak Chand Sharma by virtue of aforesaid registered deed of gift. Therefore, other five daughters of Tilak Chand Sharma and their legal representatives are not entitled to get any share. The learned Sub Judge-IX vide order dated 17.06.2016 allowed the petition of Nagendra Sharma & others to carve out their $1/6^{\text{th}}$ share out of share of $7/36^{\text{th}}$ of Tilak Chand Sharma by appointment of Pleader Commissioner. Being aggrieved by the aforesaid order, the petitioner filed this Civil Misc. petition.

The learned counsel for the petitioner submits that the suit was decided on 17.08.2010. Tilak Chand Sharma, defendant No.1, was entitled to get $7/36^{\text{th}}$ share in the suit property. Tilak Chand Sharma during his lifetime gifted the entire share of his land in favour of one of his daughters, namely, Dewanti Devi, and accordingly, Tilak Chand Sharma, also filed a petition for amendment of written statement. The same was allowed and registered deed of gift was brought on record. Tilak Chand Sharma died during the pendency of the suit and all his six daughters and their legal representatives were brought on record as defendants. The suit was preliminarily decreed holding that Tilak Chand Sharma and his legal heirs are entitled to $7/36^{\text{th}}$ share in the suit property. Thereafter, Nagendra Sharma, husband of one of the daughters of Tilak Chand Sharma, and two other daughters filed petition to get $1/6^{\text{th}}$ share and carve out their $1/6^{\text{th}}$ share from $7/36^{\text{th}}$ share of Tilak Chand Sharma. The petitioner objected the petition that Nagendra Sharma and other daughters of Tilak Chand Sharma and their legal representatives are not entitled to get any share in



the share of Tilak Chand Sharma as Tilak Chand Sharma during his lifetime gifted his entire share in favour of Dewanti Devi. The suit was decreed preliminarily with regard to gift deed. Although the learned Sub Judge has taken notice of the gift deed executed by Tilak Chand Sharma when the petition was filed by Nagendra Sharma and two daughters of Tilak Chand Sharma to carve out their 1/6th share but the learned Sub Judge without recording any finding on the gift deed allowed their petition. It is submitted that unless the court records finding with regard to the gift deed executed by Tilak Chand Sharma during his lifetime, allotting share in the name of other daughters of Tilak Chand Sharma is illegal.

Mr. Jitendra Kishore Verma, the learned counsel for the respondent Nos. 8 to 12, submits that the court, while decreeing the suit preliminarily, recorded finding with regard to gift deed. The court rejected the contention of defendant No.1 that there was any partition between the plaintiff and defendants and ordered for partition. The dispute is between the legal heirs of Tilak Chand Sharma and, therefore, this dispute cannot be decided in the present suit and Dewanti Devi should file a separate suit to lay her claim on the basis of gift deed.

Having considered the submission of both sides and on perusal of the records, I do not find any substance in the submission of learned counsel for the respondents.

Admittedly, defendant No.1, during the pendency of Partition Suit No. 46 of 1988, filed amendment petition for amending his written statement stating therein that during the pendency of the suit he executed a registered deed of gift in favour of one of his daughters, Dewanti Devi, on 11.01.1994. The amendment petition was allowed. Even the learned Sub Judge, while decreeing the suit preliminarily, took note of the fact that Tilak Chand Sharma executed gift deed with regard to his own



share in favour of one of his daughters. When other daughters of Tilak Chand Sharma filed petition to carve out their share the learned Sub-Judge before allowing the petition of other daughters is obliged to give finding with regard to gift deed executed by Tilak Chand Sharma in favour of Dewanti Devi but I find that the learned Sub-Judge while allowing the petition of respondent Nos. 1 to 12 did not record any finding with regard to gift deed and allowed the petition of respondent Nos. 8 to 12, who are daughters and legal representatives of Tilak Chand Sharma, that they are entitled to get $1/6^{\text{th}}$ share. The learned Sub Judge has committed jurisdictional error and the order is not sustainable.

Accordingly, this Civil Misc. petition is allowed and the order dated 17.06.2016 is set aside and the matter is remitted to the learned Sub-Judge to hear both sides and pass order afresh in accordance with law on the petition of respondents Nos. 8 to 12.

(Prabhat Kumar Jha, J)

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