

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1463 of 2017

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1. Md. Nazeeb @ Md. Nazeeb Alam, S/o Late SK. Jahur, resident of Village- Lal Saraya, P.S.- Majhauriya, District- West Champaran.

.... Petitioner/s

Versus

1. Shama Khatoon @ Bibi Shama, D/o Late S.K. Bechu, W/o Taukir Alam, resident of Village- Meer Bihar, P.S.- Pipara Kanak, District- Kushinagar (U.P.).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

2 30-07-2018 Heard learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition to quash the order dated 11.07.2017 passed by Sub Judge I, Bettiah, West Champaran in Title Suit No.91 of 2016 whereby the petition of the petitioner-defendant filed under Section 10 of the Code of Civil Procedure for staying the proceeding of the suit till disposal of Partition Suit No.195 of 2004 pending in the Court of Sub Judge IV, Bettiah, West Champaran has been rejected.

Admitted facts are that Sk. Noor Alam, the brother of the present plaintiff filed Partition Suit No.195 of 2004 against the petitioner and others. Petitioner is defendant No.15 in Partition Suit No.195 of 2004. The petitioner and other defendants filed



their written statement. Shama Khatoon, the sister of Noor Alam filed Title Suit No.91 of 2016 for declaring that the lands, the suit properties were orally gifted to her by her parents and she came in possession over the land by virtue of such oral gift.

The learned counsel for the petitioner submits that the plaintiff filed suit for declaration of title and confirmation of possession over the lands orally gifted to her by her father. The petitioner is also one of the defendants in the suit and he filed petition under Section 10 of the Code of Civil Procedure for stay of the present suit being Title Suit No.91 of 2016 on the ground that the brother of the plaintiff filed Partition Suit No.195 of 2004 and plaintiff also filed written statement accepting the factum of partition but in the present suit, the plaintiff claimed to have got the lands, the suit property through oral gift from her father. The suit property of the present suit are also included in the partition suit and parties in both the suits are same and similar but the learned Sub Judge has illegally rejected the petition holding that the relief sought for in both the suits are separate. It is submitted that the order is illegal but I find that in the present suit, the petitioner sought different relief and prayed to set aside the gift deed and the deed of sale as null and void and not operative. The cause of action as well as reliefs are different in two suits.



Therefore, I find no illegality in the order impugned.
Accordingly, this civil miscellaneous petition is dismissed as
devoid of any merit.

(Prabhat Kumar Jha, J)

Saurabh/-

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