

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22325 of 2012

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1. Lalmuni Devi W/O Sri Shri Ram Singh R/O Village- Sahajahanpur, P.S.-
Barhara, District- Bhojpur.

.... Petitioner

Versus

1. Sushil Kumar Singh S/O Late Shri Ram Singh R/O Village-
Sahajahanpur, P.S.- Barhara, District- Bhojpur, At Present Residing At
Mohalla- Budha Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
2. Smt. Asha Singh D/O Late Shri Ram Singh R/O Village- Sahajahanpur,
P.S.- Barhara, District- Bhojpur, At Present Residing At Mohalla- Budha
Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
3. Smt. Lalita Singh D/O Late Shri Ram Singh R/O Village- Sahajahanpur,
P.S.- Barhara, District- Bhojpur, At Present Residing At Mohalla- Budha
Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
4. Smt. Rita Singh D/O Late Shri Ram Singh R/O Village- Sahajahanpur,
P.S.- Barhara, District- Bhojpur, At Present Residing At Mohalla- Budha
Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
5. Smt. Pallavi Singh D/O Late Shri Ram Singh R/O Village- Sahajahanpur,
P.S.- Barhara, District- Bhojpur, At Present Residing At Mohalla- Budha
Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
6. Mr. Ajay Kumar Singh S/O Late Shri Ram Singh R/O Village-
Sahajahanpur, P.S.- Barhara, District- Bhojpur, At Present Residing At
Mohalla- Budha Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna
7. Mr. Chandan Kumar S/O Late Shri Ram Singh R/O Village-
Sahajahanpur, P.S.- Barhara, District- Bhojpur, At Present Residing At
Mohalla- Budha Colony, P.O.- G.P.O., P.S.- Budha Colony, District-Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajay Kr. Singh, Advocate
For the Respondent/s : Mr. V. Prasad, Advocate
Mr. Binod Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 31-01-2018 This writ application has been filed by defendant no.2 to

set aside the order dated 26.07.2012 passed by Subordinate Judge-

VI, Patna in Partition Suit No.400 of 2005. The learned

Subordinate Judge as per impugned order directed the petitioner

(defendant no.2) and Chandan Kumar (defendant no.4) to undergo



for D.N.A. test at the cost of defendant no.3.

2. Heard learned counsel for the petitioner as well as the respondents.

3. The respondent no.1 filed the aforesaid partition suit against his parents and brothers for partition of property mentioned in Schedule I and II of the plaint which was claimed to be his ancestral property. The father of plaintiff died and his daughters who were not on record at the time of filing of the suit were substituted. The defendant nos.1 and 2, who are parents of plaintiff filed their joint written statement. The defendant no.4 claiming to be full brother of plaintiff filed his written statement separately. The defendant no.3 is main contesting party to the suit and he filed a separate written statement. The case of defendant no.3 is quite distinct on the point of relationship of plaintiff and defendants. The defendant no.3 in his written statement has stated that defendant no.4 is not the son of defendant nos.1 and 2 (i.e. his parents). The plaintiff has wrongly included the defendant no.4 in the genealogical table appended at the foot of the plaint. The defendant no.3 is the elder son of defendant nos.1 and 2 and plaintiff is only younger brother of defendant no.3. The plaintiff in collusion with defendant nos.1 and 2 wants to grab the property of defendant no.3 and so he has included the defendant no.4 only to grab the major share in the suit property. The contention of



learned counsel for the petitioner is that neither the defendants accepted the defendant no.3 nor the plaintiff has denied the genealogical table as regards relationship in between the parties. In course of evidence, the defendant nos.1 and 2 have admitted that the defendant no.4 was born out of womb of defendant no.2 and so the court below has erred in directing the defendant nos.2 and 4 to undergo for D.N.A. test.

4. The learned counsel for the respondents, on the other hand, submitted that in cross-examination several suggestions were given to defendant no.2 that defendant no.4 has not born out of her womb. The learned court below in order to come to the right conclusion by scientific investigation has ordered the petitioner (defendant no.2) and Chandan Kumar (defendant no.4) to undergo for D.N.A. test. The court below has not committed any jurisdictional error in allowing the petition of the defendant no.3.

5. For the reasons stated above, I do not find any merit in this writ application and the same is accordingly dismissed.

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(Sanjay Kumar, J)

