

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16713 of 2014

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Ashok Kumar Vidyarthi son of late Belash Singh, resident of village- belari @ Beladhi, Post Office- Samahuta, P.S.- Kuchhawa (Karakat), District- Rohtas at Sasaram

.... Petitioner/s

Versus

1. Kedar Singh son of late Ramkrit Singh
2. Daroga Singh son of Sri Kedar Singh
3. Sipahi Singh son of Sri Kedar Singh, Respondent No. 1 to 3 are resident of village- Beladhi, Post Office- Samahuta, P.S.- Kachhawa (Karakat), District- Rohtas at Sasaram
4. Jagdish Singh son of late Doma Singh
5. Ram Sewak Singh son of late Doma Singh
6. Bindu Singh son of Jagdish Singh
7. Umesh Singh son of Jagdish Singh
8. Ram Nuj Singh son of Ram Sewak Singh
9. Ratnesh Singh son of Ram Sewak Singh, Respondent No. 4 to 9 are resident of village- Beladhi, Post Office- Samahuta, P.S.- Kachhawa (Karakat), District- Rohtas at Sasaram
10. Babu Lall Singh son of Hirdya Singh
11. Om Prakash Singh son of late Ram Bali Singh
12. Uma Shankar Mahto son of late Ram Bali Singh
13. Ramdeo Singh son of late Ram Dash Singh
14. Surendra Singh son of late Bishun Dayal Singh
15. Devendra Mahto son of Mahesh Mahto
16. Rajdeo Mahto son of Mahesh Mahto
17. Awadhesh Mahto son of late Shio Govind Mahto, Respondent No. 10 to 17 are resident of village- Beladhi, Post Office- Samahuta, P.S.- Kachhawa (Karakat), District- Rohtas at Sasaram

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramchandra Singh, Advocate
Mr. Jitendra Kumar Singh

For the Respondent/s : Mr. Dhaneshwar Prasad Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-05-2018

This application has been filed for setting aside the order dated 01.07.2014 passed by Munsif, Bikramganj, Rohtas in Miscellaneous Case No.05 of 2014. The court below as per impugned order dismissed the Miscellaneous case observing that this petitioner has no locus standi to file the miscellaneous case.



2. Heard learned counsel for the petitioner and the respondents.

3. It appears that the respondents filed an Execution Case No.05 of 2012 for executing the decree passed in Partition Suit No.45 of 1997. The said suit was filed by respondent 3rd set against the other respondents including father of this petitioner. The said suit ended in compromise on the basis of compromise petition which was signed by the father of this petitioner and respondents. The plaintiff filed execution case to get the compromise decree executed. The decree holder neither impleaded this petitioner nor his father as party to the execution case. This fact is not disputed by the respondents. The petitioner filed the miscellaneous case under Order 21 Rule 97 read with Section 151 of CPC claiming his interest in the property under execution proceeding.

4. The learned counsel for the petitioner submitted that the said compromise petition was got signed by his father fraudulently. One of the plots which have been allotted in the share of father of this petitioner was already sold away by the decree holder. The decree holder malafide did not implead the father of this petitioner as party to the execution case. The petitioner after the death of his father intervened into the matter and filed petition under Order 21 Rule 97 CPC as stated above. The petitioner claims that he has his residential house over the land which has been put under execution case. It appears that while rejecting the prayer of the petitioner, the court



below has observed that the father of this petitioner has already died for about two years ago. The father of the petitioner or this petitioner has not been impleaded as party to the suit and so the miscellaneous case is not legally maintainable. The court below has thus committed error in holding that the petitioner was neither decree holder nor the purchaser of land under execution. The father of this petitioner was party to the compromise petition even then he was not impleaded as party to the execution case. The property which is claimed by the petitioner after the death of his father cannot be subjected to execution case without impleading petitioner as party to the execution proceeding.

5. In view of above fact, the impugned order dismissing the miscellaneous case is not sustainable and is accordingly set aside. The court below is directed to entertain the miscellaneous case and adjudicate the interest of the petitioner in the property which is subject matter of execution case in accordance with law. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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