

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21929 of 2014

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1. Urmila Devi Wife of Nandjee Pandey
 2. Chandan Pandey Son of Nandjee Pandey null
 3. Nandjee Pandey Son of Late Dudhnath Pandey
 4. Nagendra Pandey Son of Ravindra Nath Pandey
 5. Rintu Pandey Son of Nandjee Pandey
 6. Bidyawati Devi Wie of Ravindra Nath Pandey
 7. Narayan Pandey Son of Late Dudhnath Pandey
 8. Ravindra Pandey @ Rabindra Nath Pandey Son of Late Dudhnath Pandey all residents of Village - Nokha, Police Station - Nokha, District - Rohtas (Sasaram).

... .. Petitioner/s

Versus

1. Ramesh Pandey Son of Suresh Pandey
2. Suresh Pandey Son of Late Dudhnath Pandey
3. Kaushlya Devi alias Kamala Devi Wife of Suresh Pandey
4. Rajesh Pandey Son of Suresh Pandey all residents of Village - Nokha, Police Station - Nokha, District - Rohtas (Sasaram).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Atul Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Kamla Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 04-12-2018

Petitioners are defendants in Title Suit No.345 of 2005 pending in the Court of Sub Judge-I, Sasaram. They have filed this application to quash the order dated 10.06.2014 whereby and whereunder the learned court below rejected the petition filed by the petitioners to dismiss the suit as barred by the provisions of Order 23 Rule 3A of CPC.

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



3. The learned counsel for the petitioners submitted that the petitioner no.8 Ravindra Pandey @ Rabindra Nath Pandey had filed Title Suit No.93 of 1993 against his brothers for partition of joint family properties. In the said suit, the father and mother of Ramesh Pandey who is plaintiff of Title Suit No.345 of 2005 were defendants. The said suit ended in compromise. The suit was decreed and final decree was passed on 28.04.1994. He further submitted that the plaintiff of Title Suit No.345 of 2005 has no right to seek partition in view of the fact that his father and mother had signed compromise petition in the earlier Title Suit No.93 of 1993. The present suit is hit by the provision of Order 23 Rule 3(A) of CPC as the principles of res judicata. The order passed by the learned court below is not sustainable and is fit to be quashed.

4. The learned counsel for the respondents on the other hand submitted that the respondent no.1 Ramesh Pandey who is plaintiff of Title Suit No.345 of 2005 was neither party to the suit nor he had signed compromise petition. The property under partition is a co-parcenary property and so he has right to seek partition. The learned court below has rightly rejected the prayer of the petitioners and so this writ application is not sustainable.

5. After hearing both sides and on going through the impugned order, I find that the respondent no.1 Ramesh Pandey



was neither party to the suit nor he was represented by his parents or through any person. The properties under partition are coparcenary property. The plaintiff Ramesh Pandey was necessary party to the earlier suit. This fact has not been denied by the other side. The question involved in the suit is a mixed question of law and facts and so the learned court below has rightly rejected the prayer of the petitioners to decide the suit on preliminary objection of being barred by the provision of Order 23 Rule 3A of CPC.

6. In view of above discussions, I find that the writ application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.12.2018
Transmission Date	N/A

