

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16003 of 2014

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1. Bechu Tiwari
 2. Bachan Tiwari Both are sons of Sheo Jee Tiwari Resident of Village- Badar Jimi, Police Station- Mirganj, District- Gopalganj

.... Petitioner/s

Versus

1. Dadan Ojha son of Late Dina Nath Ojha, resident of village- Isuyapur, Police Station- Kuchaikote, District- Gopalganj.
2. Om Prakash Tiwari son of Sheo Jee Tiwari
3. Sheo Jee Tiwari son of Late Nathuni Tiwari both are resident of village- Badar Jimi, Police Station- Mirganj, District- Gopalganj.
4. Lalita Devi wife of Jata Shankar Tiwari resident of village- Bhediya, Post Office + Police Station- Thawe, District- Gopalganj.
5. Bhaoja Devi wife of Ramdeo Mishra, resident of village- Isuyapur, Police Station- Kuchaikote, District- Gopalganj.
6. Prabhawati Devi wife of Shambhu Nath Tiwari resident of village- Isuyapur, Police Station- Kuchaikote, District- Gopalganj.
7. Chandrawati Devi wife of Dhruvdeo Dubey, resident of village- Pukledha Mairwa, Police Station- Mairwa, District- Siwan.
8. Praduman Tiwari
9. Radhe Shyam Tiwari both are sons of Late Deo Narayan Tiwari
10. Paras Tiwari son of Raghu Nath Tiwari, all are resident of village- Repura, Police station- Mirganj, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Dwivedi, Advocate

For the Respondent/s : Mr. Sanjay Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-08-2018

Petitioners before this Court are respondents in Title Appeal No.68 of 2005 pending in the Court of Additional District Judge-IV, Gopalganj. They have filed this application for quashing the order dated 14.05.2014 whereby and whereunder the petition filed by the petitioners under Section 151 read with Order 9 Rule 7 CPC was rejected.



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

3. It appears that the respondent no.1 filed Title Suit No.476 of 2002 for partition of suit property claiming 1/12 share in the land mentioned in schedule-2 and 3 of the plaint after setting aside the deed of gift dated 05.05.1986 executed by original plaintiffs in favour of defendant nos.1 to 3 with respect to land mentioned in schedule-1 of the plaint. The defendant nos.3 and 4 appeared and filed written statement. The suit was decreed and the deed of gift was cancelled as per judgment dated 05.05.1986. The defendant nos.1 and 2 who are full brothers of defendant no.3 and sons of defendant no.1 did not appear and so the suit proceeded ex-parte against them. The father and brother of these petitioners filed Title Appeal No.68 of 2005. The present petitioners having come to know about the pendency of title appeal, appeared before the learned appellant court and filed a petition to permit them to adopt the written statement of defendant nos.1 and 3 which was filed before the court below. The learned appellant court refused the prayer as per impugned order.

4. On going through the impugned order and documents on record, I find that the suit was decreed ex-parte against these petitioners. They have not challenged the ex-parte decree either by filing appeal or by filing application under Order 9 Rule 13 of the



CPC. The said judgment is final against these two petitioners. The learned court below rejected the petition as not maintainable. There does not appear any jurisdictional error in refusing to permit the petitioners to adopt the written statement of other defendants at appellant stage. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.08.2018
Transmission Date	N/A

