

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1308 of 2016

1. Mantra Nand Jha son of Late Pandit Devanand Jha
2. Dilip Kumar Jha son of Mahesh Jha
3. Heera Devi wife of Mahesh Jha All residents of Village + P.S. Lakhnour, District Madhubani.

... .. Petitioners/Plaintiffs

Versus

1. Sri Badri Jha son of Pandit Netranand Jha
2. Sri Punyanand Jha alias Binod Jha son of Pandit Khelanand Jha
3. Sri Bhavendra Jha son of Late Pandit Devanand Jha
4. Tantranand Jha son of Devanand Jha
5. Sri Mohan Jha son of Late Sharda Nand Jha
6. Sri Janardan Jha son of Late Khelanand Jha
7. Sri Kishore Kumar Jha son of Netranand Jha
8. Sadanand Jha son of Late Tula Nand Jha
9. Smt. Bulchan Devi daughter of Late Tula Nand Jha, wife of Kedar Nath Thakur resident of village Sarbsima, P.O. Lohna Road, District Madhubani.
10. Most. Heera Devi wife of Late Baidyanath Jha
11. Amir Jha son of Late Baidyanath Jha All above except respondent mentioned at Serial no. 9, are resident of Village+P.S. Lakhnour, District Madhubani.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. K.D. Chatterjee, Advocate Mr. Chandan Jha, Advocate
For the Respondents	:	Mr. Shivendra Lal Das, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 26-11-2018

Heard both sides.

2. The petitioners have filed this civil miscellaneous petition against the order dated 31.03.2016 passed by learned Munsif, Jhanjharpur in Title Suit No.62 of 1997 by which the learned Munsif allowed the petition of respondents no.10 and 11, namely, Most. Heera Devi and Amir Jha to be impleaded as defendants in the suit.



3. The petitioners are the plaintiffs. Petitioners filed Title Suit No.62 of 1997 for declaration that the trust deed created by Tulanand Jha and Upendra Jha, the second son and grandson of Jayanand Jha nominating other legal heirs of Tekanand Jha and Khelanand Jha as beneficiary of the trust deed is illegal. Admittedly the plaintiffs are one of the sons of Devanand Jha from his second wife and wife and son of another son, Mahesh Jha of Devanand Jha from his second wife. The defendants are beneficiaries of the trust deed. Defendants are some of the legal heirs of Tekanand Jha, Khelanand Jha and sons of first and second wife of Devanand Jha. One Vidyanand Jha got four sons, namely, Jayanand Jha, Dinanand Jha, Tekanand Jha and Khelanand Jha. Trust deed was created by Tulanand Jha and Upendra Jha, son and grandson of Jayanand Jha and beneficiaries of the trust are most of the legal heirs of Tekanand Jha, Khelanand Jha, Devanand Jha and one of the son of Tulanand Jha. Sons of Dinanand Jha filed petition during the pendency of the suit that although the lands standing in the name of Vidyanand Jha was partitioned amongst all the four sons of Vidyanand Jha but one of the son and grandson of Jayanand Jha created trust deed by including ancestral joint property standing in the name of Vidyanand Jha in order to deprive the due share of the intervenors. The learned Munsif after hearing



both sides allowed the intervenor petition holding that the intervenors are of the same family and they are interested in the suit. Being aggrieved by the order aforesaid, the petitioners-plaintiffs filed this civil miscellaneous petition.

4. Mr. K.D. Chatterjee, the learned counsel appearing on behalf of the petitioners submits that on perusal of the intervenor petition it would appear that the intervenors themselves stated that the lands were partitioned amongst the four sons of Vidyanand Jha. The intervenors have not stated anywhere in the petition that any part of the land falling in their share was included in the trust deed, therefore, the intervenors are not necessary parties in the suit filed by the plaintiffs for declaration that the trust deed was created on concealment of facts, that Mahesh Jha and Mantranand Jha are the sons of Devanand Jha and they were excluded from the names of the beneficiaries only in order to grab the lands of their share.

5. On the other hand, the learned counsel for the intervenors-respondents submits that the trust was created with regard to the joint land standing in the name of Vidyanand Jha including the pond. All the four sons of Vidyanand Jha got share in the pond but the pond was included in the trust property, therefore, the sons of Dinanand Jha who got $\frac{1}{4}$ share in the ancestral property



are also necessary parties in the suit for declaration of the trust deed as illegal.

6. Having considered the facts and submissions of both sides, I find that the author of the trust deed is Tulanand Jha and Upendra Jha. Jayanand Jha got two sons, Devanand Jha and Tulanand Jha. Devanand Jha got two sons, namely, Upendra Jha and Khagendra Jha from his first wife and four sons from second wife. Upendra Jha, son of Jayanand Jha from his first wife and his brother Tulanand Jha are the author of the trust deed. The author of the trust deed made beneficiary of the legal heirs of Tekanand Jha and Khelanand Jha, the own brother of Jayanand Jha. Some of the legal heirs of Devanand Jha and Khelanand Jha, Tekanand Jha were excluded from the list of beneficiaries of the trust. On such one of the grandson of Dinanand Jha and Heera Devi, wife of Baidyanath Jha also filed intervenor petition alleging that the joint family property was included in the trust and they were excluded from the names of the beneficiaries of the trust. The plaintiff has nowhere stated that the lands falling in the share of Dinanand Jha, one of the son of Vidyanand Jha were not included in the trust deed, therefore, I find that the trust deed was created with regard to the joint family property excluding some of the legal heirs of Dinanand Jha and others and thus, the intervenors are necessary



parties and the learned Munsif has rightly allowed them to be impleaded as defendants under Order I Rule 10 (2) of the Code of Civil Procedure. Thus, I do not find any illegality or jurisdictional error in the order impugned.

7. Accordingly, the civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2018
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