

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2318 of 2014

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1. Mosmat Janki Kuer Wife Of Late Kishun Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
 2. Poonam Devi Daughter Of Late Kishun Singh, Wife Of Gulab Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua). At Present Resident Of Village - Bharari, P.S. - Chainpur, District - Kaimur (Bhabua)

... .. Petitioner/s

Versus

1. Doma Singh Son Of Late Ram Sakal Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
2. Mohan Singh Son Of Late Ram Sakal Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
3. Prahlad Singh (Minor) Son Of Mohan Singh Represented Through His Father Mohan Singh, Being Legal And Natural Guardian Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
4. Yashwant Singh Son Of Late Ram Brich Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
5. Mintu Singh Son Of Late Ram Brich Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
6. Mosmat Shanti Kuer Wife Of Late Ram Brich Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
7. Bharat Singh Son Of Shiv Nath Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
8. Murali Singh Son Of Shiv Nath Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)
9. Awadhesh Singh Son Of Shiv Nath Singh Resident Of Village - Muri, P.S. - Chainpur, District - Kaimur (Bhabua)

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Kumar Sunil, Advocate
For the Respondent	:	Mr. None.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

8 16-03-2018 The petitioners are defendant nos.4 and 5 of Title Suit No.195 of 2005 pending in the Court of Sub Judge-5th, Kaimur at Bhabua. They have filed this application for quashing the order dated 19.10.2013 whereunder the petition filed for permitting them to contest the suit was dismissed.



2. Heard learned counsel for the petitioners. Nobody appeared for the respondents on repeated calls. The Opposite Party Nos.1 to 3 have filed the aforesaid Suit No.195 of 2005 for partition of property claiming 1/3rd share in schedule-Ka' and 1/6th share in schedule-Kha' of the plaint and further to declare that Habbanama deed no.4884 dated 04.07.1961 in the name of Shyama Singh vrs. Ram Brich Singh as not binding upon the plaintiff.

3. It has been submitted that the petitioners are co-sharer of the plaintiff. Out of the aforesaid petitioners, the petitioner no.1 is a illiterate widow lady and petitioner no.2 is her married daughter residing at different place. They had no knowledge about the instant suit. The suit properties mentioned in schedule-'ka' and 'Kha' of the plaint were acquired by Ram Brich Singh and late Kishun Singh. The petitioners are widow and daughter of Kishun Singh who had share to the extent of half. The petitioners have further asserted that the deed of gift executed in the year 1961 is genuine, valid and binding on the plaintiffs. The plot in dispute were recorded in the revisional survey Khatiyan on the basis of said deed of gift. The petitioners got knowledge about the pendency of the suit and filed the petition which has been rejected by the court below. The petitioners had no



knowledge about the pendency of the suit as neither notices were issued nor served on the petitioners. Besides that the defendant no.10 has died and no step for substitution has been taken by the plaintiff and so the suit is still premature. The petitioners got knowledge about the pendency of the suit and filed petitions without causing any delay but the court below rejected the petition without assigning any cogent reason.

4. The respondents in spite of service of notice did not appear.

5. On perusal of impugned order, it appears that while rejecting the petition, the court below has observed that there was no service report as regards service of summons on these petitioners. The notices were issued but no order could be passed and case proceeded without declaring the summons served on these petitioners. The court below further observed that the petitioners are family members of the plaintiffs and so they had full knowledge about the pendency of the suit. The court below on these two grounds rejected the petition filed the petitioners. Thus, it is apparent that notices issued against the petitioners were neither declared validly served nor there is any paper to show that the notices were issued or tendered on these petitioners either through the process of the court or by



registered post. It further appears that one of the defendants has died and for his substitution no step has been taken by the plaintiff. The petitioner no.1 is a widow lady and petitioner no.2 is her daughter and after marriage she is residing in different village. The court below has committed error in proceeding with the case for hearing without declaring the notices served on these petitioners.

6. In this view of the matter, the impugned order is not sustainable and is accordingly set aside. This application is accordingly, allowed.

(Sanjay Kumar, J)

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