

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.65 of 2016

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1. Hare Ram Mahto @ Gonar Mahto @ Gonar Mahton @ Hare Ram Mahton
 2. Karo Mahto @ Ram Balak Mahto
 3. Bablu Mahto Bachcha Mahto
 4. Sanjay Mahto
 5. Sanjit Mahto All 1 to 5 are sons of Late Bano Mahto and resident of village- Bagha, P.O. Suhird Nagar, P.S.- town, district- Begusarai.

.... Appellant/s

Versus

1. Shankar Matho son of Late Bato resident of village- Bagha, P.O.- Suidr Nagar, P.S. Town, District- Begusarai.
2. Most. Mala Devi wife of Late Rajo Sah.
3. Binod Sah son of Late Rajo Sah
4. Sudhir Sah son of Late Rajo Sah.
5. Renu Devi daughter of Late Rajo Sah.
6. Sita Devi daughter of Late Rajo Sah All 2 to 6 are resident of village- Bagha, P.O.- Suhird Nagar, P.S.- Town, District- Begusarai.
7. Ran Jatan Sah son of Sukhdeo Sah
8. Chhotan Sah son of Sukhdeo Sah
9. Sucha Devi daughter of Sukhdeo Sah.
10. Gita Devi daughter of Sukhdeo Sah
11. Sita Devi daughter of Sukhdeo Sah.
12. Bharat Sah son of Late Baijnath Sah.
13. Shatrughan Sah son of Late Baijnath Sah.
14. Dai Sundari Devi wife of Late Harbansh Sah.
15. Upendra Sah son of Late Harbansh Sah.
16. Ram Udgar Sah son of Late Harbansh Sah.
17. Rajeev Kumar Sah son of Late Harbansh Sah.
18. Niraj Kumar son of Late Harbansh Sah.
19. Kanti Devi daughter of Late Harbansh Sah.
20. Janki Devi daughter of Late Harbansh Sah.
21. Babita Kumari Daughter of Late Harbansh Sah.
22. Ram Sagar Sah son of Late Sodhan Sah.
23. Lakhan Sah son of Late Anup Sah.
24. Dinesh Sah son of Late Anup Sah.
25. Ram Pukar Sah son of Late Anup Sah.
26. Sundari Devi wife of Late Ganesh Sah.
27. Bina Devi wife of Late Kedar Sah.
28. Pratima Devi daughter of Late Kedar Sah.
29. Khusbhu Kumari daughter of Late Kedar Sah.
30. Sadanand Sah son of Late Jagdish Sah.
31. Balram Sah son of Late Jagdish Sah.
32. Sakun Devi wife of Late Narayan Sah.
33. Sujan Kumari daughter of Late Narayan Sah.
34. Sikandar Sah son of Late Narayan Sah.
35. Munna Sah son of Late Narayan Sah.
36. Sumitra Devi wife of Late Ram Chandra Sah.
37. Karki Devi daughter of Late Ram Chandra Sah.
38. Soni Kumari daughter of Late Ram Chandra Sah.
39. Deo Nandan Sah son of Late Ram Chandra Sah @ Bechan Sah
40. Shiv Sah son of Late Ram Chandra Sah @ Bechan Sah.
41. Babita Devi wife of Late Bablu Sah.
42. Sirgo Kumar (minor) under the guardianship of Babita Devi.



43. Madho Kumar (Minor) under the guardianship of Babita Devi.
44. Saro Kumar (minor) under the guardianship of Babita Devi.
45. Ranjit Sah son of Late Ram Chandra Sah @ Bechan Sah. All 7 to 45 are resident of village- Bagha, P.O.- Suhird Nagar, P.S.- Town, District- Begusarai.
46. Sumitra Devi Wife of Upendra Sah and daughter of Late Baleshwar Sah resident of - village- Sonapur, P.S.- Nayagoan, District- Begusarai.
47. Poonam Devi wife of Santosh Sah and daughter of Late Baleshwar Sah resident of village- Teghra, Pargana- Milki, District- Begusarai.
48. Babita Devi wife of Satrugan Sah and daughter of Late Baleshwar Sah resident of village- Naula, P.S.- Bhagwanpur, District- Begusarai.
49. Raj Kumar Sah son of Late Baleshwar Sah
50. Ram Bhushan Sah son of Late Baleshwar Sah
51. Shambhu Kumar son of Late Baleshwar Sah.
52. Manoj Kumar Sah, son of Late Baleshwar Sah All 49 to 52 are resident of village- Bagha, P.O.- Suhird Nagar, P.S.- Town, District- Begusarai.
53. Jai Mala Devi wife of Late Bano Mahto resident of Village- Bagha (Raghubar Nagar), Pargana- Balia, P.O.- Suhird Nagar, P.S.- Town, District- Begusarai.
54. Phul Pari Devi wife of Ram Pukar Singh and daughter of Late Bano Mahto resident of Village- P.O.- Lakho, Pargana- Balia, District- Begusarai.
55. Usha Devi wife of Bangali Rai and Daughter of Late Bano Mahto resident of village- Ram Chandra Pur, P.O. + P.S.- Sarairanjan, District- Samastipur.
56. Kavita Devi wife of Vimal Mahto and daughter of Late Bano Mahto resident of Village- Bal Krishnapuri Marwar, P.O. + P.S.- Vidyapati Nagar, District- Samastipur.
57. Vijay Mahto son of Late Ratan Matho
58. Sajni Devi wife of Late Ratan Mahto All 57 to 58 are resident of village- Bagha, P.O. Suhird Nagar, P.S.- Town, District- Begusarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shaishav Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

- 8 05-01-2018 1. Heard both sides.
2. The petitioner has filed this Civil Misc. petition against the order dated 01.12.2015 passed in Title Appeal No.17 of 2014 by which the learned District Judge, Begusarai allowed the respondent No.54 to contest the Appeal.
3. The plaintiffs filed the suit for declaration of title and



confirmation of possession against defendant No.1 to 10 who are defendants Ist set in Title Suit No.58 of 1990. The plaintiffs filed Title Suit No.58 of 1990 for declaration of title and confirmation of possession over the suit land. The defendant No.1 to 10 are the contesting defendants and defendants who are arrayed as defendants Ist set and defendant No.11 to 33 are defendants 2nd set who supported the case of the plaintiff. The suit was decreed declaring the title and confirmation of possession of plaintiff and defendants 2nd set over the suit land against defendants Ist set, defendant No.1 to 10. Out of defendants Ist set, five persons preferred Title Appeal No.17 of 2014 against the judgment and decree dated 26th April, 2014 passed in Title Suit No.58 of 1990. Defendant No.8 of defendants Ist set was arrayed as respondent No.54 in Title Appeal No.17 of 2014. During the pendency of the appeal, appellants as well as other respondents filed petition under Order XXIII Rule 1 read with Section 151 of the CPC to withdraw the suit on compromise. Respondent No.54, Shankar Mahton, in the appeal and respondent No.1 in the present petition filed petition to allow him to contest the suit. The learned District Judge vide order dated 01.12.2015 passed in Title Appeal No.17 of 2014 allowed the petition of Shankar Mahton to be transposed as appellant 2nd party and contest the appeal.



4. Learned counsel for the petitioners submits that Shanker Mahton did not appear in the suit and the suit was heard ex-parte against Shanker Mahton. Therefore, he has got no right to contest the appeal and order passed by the learned District Judge is erroneous but I find no force in the submission of the learned counsel for the petitioner on simple ground that the suit was decreed against defendant No.8, Shanker Mahton, who was arrayed as respondent No.54 in Title Appeal No.17 of 2014 and he has got right to contest the appeal on the basis of the evidences already collected during the course of hearing of the suit and the learned District Judge has rightly allowed the petition of respondent No.54 to be transposed as appellant 2nd set to contest the appeal.

5. Having considered the facts aforesaid, I do not find any merit in this Civil Misc. petition. Accordingly, this Civil Misc. petition is dismissed.

Sanjeev/-

(Prabhat Kumar Jha, J)

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