

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1871 of 2012

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1. Dudh Nath Singh
 2. Baidhya Nath Singh, both sons of late Vishambhar Singh, resident of village-Naya Tola Turkolia, PO and PS-Turkaulia, District-East Champaran.
 3. Smt. Kiran Sinha daughter of late Vishambhar Singh wife of Sri Harendra Singh, resident of village-Kuberwa, PO-Pehanhi, PS-Nautan, District-Siwan.

.... Petitioner/s

Versus

1. Rabindra Singh
2. Paras Singh, both sons of late Laxmi Singh
3. Munsetari Devi wife of late Laxmi Singh
4. Babu Lal Singh son of late Ramdhani Singh, all above are resident of village-Nayatola, Turkolia, PO and PS-Turkolia, District-East Champaran.
5. Shrimati Devi daughter of later Sukhraj Singh wife of Permanand Singh, resident of village+ P.O. Gayaghat, PS-Harsidhi, District-West Champaran.
6. Shri Bhagawan Singh son of late Ram Prasad Singh, resident of Ballai, PO-Siwan, PS-Siwan Town, District-Siwan.
7. Shankar Sharma
8. Harinath Sharma
9. Paras Sharma, All are sons of late Satyadeo Sharma, all are resident of village Turkoliya, Tola Baswaria, PS and PO-Turkolia, District-West Champaran.
10. Muem Miya son of Sheikh Sahadat
11. Parwez Alam son of Makbul Miya
12. Sikander Miya son of Seikh Aasin, all above three are resident of village-Koireya P.S. + PO-Turkoliya, District-West Champaran
13. Motilal Singh son of Ramanand Singh resident of village-Nimuiyan, PS + PO-Turkolia, District-West Champaran.
14. Nageshwar Singh son of Ramdhari Singh, resident of village- Nayatola, Turkolia, PO and PS-Turkolia, District-East Champaran
15. Ramashray Singh son of late Indrasan Singh
16. Shri Bhagwan Singh
17. Raj Nandan Singh, both are sons of Ramashray Singh, Sl. No. 15 to 17 are resident of village-Manjharia, PO-Chailaha, PS-Turkaulia, District-West Champaran.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Parth Gaurav, Adv.

For the Respondent/s : M/s Madhurendra Kumar and Avinash, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-03-2018

Petitioners before this Court are plaintiffs of Title Suit



No. 182 of 2007. They have filed this application for setting aside the order dated 7th May 2009 passed by the Sub-Judge-IV, Motihari whereby and whereunder the petition filed by intervenor under Order 1 Rule 10 CPC was allowed.

2. The petitioners-plaintiffs filed the aforesaid suit for declaration of their title over the land mentioned in schedule-II of the plaint which is part of schedule-I of the plaint. The plaintiffs further sought relief for partition claiming share to the extent of half as alternative relief. According to the case of plaintiff, one Mohan Bhagat was ancestor of defendant. The said Mohan Bhagat died before revisional survey operation leaving behind six sons. The sons of Mohan Bhagat separated among themselves and partitioned the landed property by fixing ridges. One of the sons of Mohan Bhagat namely Vika Bhagat died leaving behind two sons namely Nandlal Bhagat and Mathura Bhagat. The sons of Vika Bhagat acquired property out of income of joint family. The plaintiffs claim to be sons and daughter of Bishambhar Singh who was the elder son of Mathura Singh. After the death of first wife, Mahendra Singh married with another lady namely Sahlatia Devi. The said Mahendra Singh died leaving behind his widow Sahlatiya and her daughter Lakhiya. Her daughter died unmarried and subsequently Sahlatia also died. The intervenor Lakhpati Devi @ Lakhpati claiming to be daughter of



Mahendra Singh, filed petition for impleading herself as defendant to the suit. The plaintiffs filed rejoinder and denied the case of the intervenor. According to the petitioners, the uncle of these petitioners died in the year 1983 leaving behind his widow and his daughter Lakhiya Devi who subsequently died unmarried on 12.05.1992. The Intervenor has no concern with the family of the petitioners and the said lady has been set up by defendant no. 4, Babu Lal Singh who is brother-in-law of husband of said Lakhiya Devi. The court below after hearing both sides, allowed the petition observing that the matter as regards inheritance by intervenor in the property of plaintiffs can be determined only after trial.

3. Learned counsel for the petitioner referred Annexure-4 to this application which is a copy of deposition of Ramashray Singh son of Indrashan Singh examined as witness no. 9 in Title Suit No. 60 of 1993. In evidence, the said Ramashray Singh has stated that Lakhpatiya Devi is his wife and she had no issue. He has further stated that his father-in-law had no daughter namely Lakhiya. On the strength of this deposition, learned counsel for the petitioner has prayed to set aside the impugned order whereunder Lakhpatiya Devi has been impleaded as party to the suit. The matter in controversy cannot be decided on the basis of a deposition submitted by the petitioners. The court below while allowing the intervenor petition,



has observed that the heir-ship of Lakhpatiya Devi can be decided only after the trial. The intervenor claimed to be co-sharers of the plaintiffs with respect to the land under partition.

4. In view of above facts, I find that the court below has not committed any jurisdictional error in allowing the intervenor petition.

5. This application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.03.2018
Transmission Date	

