

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4728 of 2014

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Banarsi Prasad Singh Son Of Late Bharat Singh Resident Of Village Rupī,
P.S. Dinara, District - Rohtas, At Present Resident Of Mohalla - Takiya,
Post Takiya, P.S. Sasaram, (Model) District - Rohtas

.... Petitioner

Versus

1. Suraj Kumar Singh @ Suraj Narayan Singh Son Of Late Jagdeo Singh Resident Of Village - Kushahi, P.O. And P.S. Nokha, District - Rohtas (Sasaram), At Present Resident Of Mohalla - Cold Storage, P.O. And P.S. Darihat, District - Rohtas
2. Hari Narayan Singh
3. Satya Narayan Singh Both Are Sons Of Late Jagdeo Singh
4. Digbijay Singh Son Of Hari Narayan Singh
5. Sachchida Singh
6. Narendra Singh
7. Manoj Kumar Singh
8. Ajay Singh
9. Raj Kumar Singh All (5 To 9) Sons Of Satya Narayan Singh All Are Resident Of Village - Kusahi, P.O. And P.S. Nokha, District - Rohtas (Sasaram)
10. Tulsi Sah
11. Munsī Sah
12. Ram Naresh Sah
13. Baij Nath Sah All (10 To 13) Are Sons Of Punna Sah All Resident Of Village Amra Talab, P.O. Karwandiā, P.S. Sasaram, District - Rohtas (Sasaram)

.... Respondents

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Appearance :

For the Petitioner : Mr. Raghav Prasad & Subash Kumar, Advs.

For the Respondent No.1 : Mr. Sandip Singh, Advocate

For the Respondent Nos.2 to 4 & 6 Mr. Sanjay Kumar Pandey No.5, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL ORDER

8 05-01-2018 This application has been filed for quashing the order dated 23.01.2014 passed by learned Sub Judge-VII, Sasaram in Title Suit No.754 of 2011 whereby and whereunder the Sub Judge debarred the petitioner and respondent no.2, 4 to 9 from participating and contesting the suit on account of non-filing of the list of witnesses as provided under the provision of Order XVI



Rule 1 CPC.

2. Heard learned counsel for the petitioner and respondents.

3. It appears that the respondent no.1 filed partition suit no.754 of 2011 claiming $1/3^{\text{rd}}$ share in the suit property. The defendant appeared and filed written statement. The court below framed issued and directed the parties to file list of witnesses. The court below as per impugned order dated 23.01.2014 debarred the petitioner and respondent nos.2, 4 and 6 from participating and contesting the suit. According to provision of Order XVI Rule 1 CPC, the court has jurisdiction to permit a party to call/examine any witness other than those whose names appeared in the list referred to in sub-rule-1 of Order XVI Rule 1 CPC. The court below has misinterpreted the provision of law and debarred the petitioner from contesting the case.

4. In view of above provision of law, the impugned order dated 23.01.2014 debarring the petitioner and other respondents from contesting the suit is set aside.

5. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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