

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16783 of 2011

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Ram Chandra Mishra & Anr

.... Petitioner/s

Versus

Sudhanshu Mishra & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Adv.
Mr. Parth Gaurav, Adv.

For the respondent/s : Mr. Raghav Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-10-2018

Petitioners before this Court are defendant nos. 13 and 14 in Title Suit No. 98 of 2002 pending in the court of Sub-Judge-IX, Gopalganj. They have filed this writ application for quashing the order dated 12.03.2008 whereby and whereunder their prayer to delete plot no. 667 of khata No. 164 area 5 katha 18 dhur from the schedule mentioned in the plaint has been refused.

2. Heard learned counsels for the petitioners and the respondents.

3. It has been submitted that the petitioners are stranger to the family of plaintiffs and other respondents. They are not the co-sharer of the plaintiffs but their land has been mentioned in schedule-I of the plaint for partition. The ancestor of these petitioners had orally purchased plot nos. 667 and 668 from the ancestors of plaintiffs on 15.05.1920. After purchase, the ancestors of these



petitioners came in possession. The respondents filed Title Suit No. 234 of 1986 with respect to plot no.667 in dispute before the court of Munsif which was dismissed as per judgment and decree dated 30.03.1991. Thereafter, the respondents filed Title Appeal No. 21 of 1991 before the learned District Judge, Gopalganj which was also dismissed on 31.01.2002. The respondents then filed Second Appeal No. 77 of 2002 which has also been dismissed. The respondents in spite of dismissal of suit which has attained finality, have again filed the present suit for partition impleading these petitioners as party to the suit. The petitioners had filed a petition before the court below for deleting one of the plot bearing no. 668 from the plaint which was allowed as per order dated 15.09.2007. In the earlier petition, another plot bearing no. 667 inadvertently could not be mentioned and so these petitioners filed a petition on 03.01.2008 praying therein to delete plot no. 667. The present petition to delete the said plot is on same ground and so the same ought to have been allowed by the court below.

4. The learned counsel for the respondents on the other hand submitted that the petitioner had already filed a petition earlier which was allowed on 15.09.2007. The petitioner in order to prolong the disposal of the suit has filed the present application at belated stage and so the court below has rightly dismissed the said petition.



5. On going through the impugned order, I find that the court below rejected the prayer of these petitioners only on the ground that the dispute between the parties with respect to plot no. 667 is still subsisting as Second Appeal No. 77 of 2002 is pending before this Court. According to the learned counsel for the petitioners, the said second appeal has already been dismissed and the judgment of court below has attained finality. The learned counsel for the respondents does not dispute this fact, however the judgment of this Court passed in Second Appeal No.77 of 2002 is not on record and so it is difficult to give any positive observation.

6. In view of above discussions, the impugned order refusing to delete the plot no. 667 in dispute is set aside and this writ application is allowed. The matter is remitted to the court below with a direction to pass a speaking order after hearing both sides and perusing the judgment passed in second appeal.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31/10/2018
Transmission Date	N/A

