

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4780 of 2014

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Saroj Kumar Son Of Sheo Pratap Singh Resident Of Village - Dharupur, P.S.
Bikramganj, District - Rohtas

.... Petitioner/s

Versus

1. Parasnath Tiwary Son Of Ram Tiwary
2. Pintu
3. Chintu Both are minor sons Of Parasnath Tiwary, Under The Guardianship Of His Father, Namely, Parasnath Tiwary All Are Resident Of Village - Dharupur, P.S. Bikramganj, District - Rohtas
4. Sushila Devi W/O Ram Krishna Upadhyay, D/O Late Kailash Tiwary Resident Of Village - Dehri, P.S. Karakat, District - Rohtas (Sasaram) At Present Village - Dharupur, P.S. Bikramganj, District - Rohtas (Sasaram)
5. Malti Devi W/O Ramjee Pandey, D/O Late Kailash Tiwary Resident Of Village - Dinara, P.S. Dinara, District - Rohtas (Sasaram) At Present Village - Dharupur, P.S. Bikramganj, District - Rohtas (Sasaram)
6. Kalawati Devi D/O Rajeshwar Tiwary
7. Chinta Devi D/O Rajeshwar Tiwary
8. Geeta Devi D/O Rajeshwar Tiwary
9. Prabhunath Tiwary
10. Sanjay minor Son of Triveni Tiwary, Under The Guardianship Of His Father Triveni Tiwary
11. Siyaram Tiwary
12. Bachcha Minor Son Of Siyaram Tiwary, Under The Guardianship Of His Father Siyaram Tiwary
13. Om Prakash
14. Bachcha both are Minor Sons Of Ram Bachan Tiwary, Under The Guardianship Of Jaya Kumari, Advocate, G.A.L. Null
15. Sabitri Devi D/O Ram Adhar Tiwary
16. Rameshwar Tiwary S/O Ram Adhar Tiwary
17. Bishnu Shanker
18. Gurudutt both are minor Sons Of Ram Bachan Tiwary, Under The Guardianship Of Jaya Kumari, Advocate, G.A.L.
19. Most. Bimala Kuer W/O Gorakh Tiwary
20. Bachcha Minor Son Of Late Gorakh Tiwary, Under The Guardianship Of Most. Bimala Kuer, Mother And Guardian
21. Gopal Tiwary
22. Sheojee Tiwary Both Sons Of Ram Ekbal Tiwary
23. Taramuni D/O Chandra Shekhar Tiwary
24. Shri Krishna Tiwary S/O Chandrashekhar Tiwary
25. Munmun Tiwary Son Of Chandra Shekhar Tiwary, Under The Guardianship Of Chandra Shekhar Tiwary, Father And Guardian
26. Guddu Tiwary
27. Bachcha Both Are Minor Sons Of Shri Krishna Tiwary, Under The Guardianship Of Shri Krishna Tiwary, Father And Guardian
28. Bacha Minor Son Of Shambhu Tiwary, Under The Guardianship Of Shambhu Tiwary, Father And Guardian Of Minor All Residents Of Village - Dharupur, P.S. Bikramganj, District - Rohtas (Sasaram)
29. Banktesh Pandey S/O Kedar Nath Pandey Resident Of Village - Handin, P.S. Rajpur, District - Rohtas (Sasaram)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. JITENDRA PRASAD SINGH, Advocate



For the Respondent/s : Mr. Arbind Kumar Pandey, Advocate
Mr. Abhishek, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 19-11-2018

This application has been filed for quashing the order dated 28.09.2013 passed by Additional District Judge-IV, Rohtas at Sasaram in Title Appeal No.129 of 1996 whereby and whereunder, prayer of the petitioner to implead him as respondent was rejected.

2. Heard learned counsel for the petitioner and the respondents.

3. It appears that the Partition Suit No.125 of 1983 filed by the respondent 2nd set (plaintiff) was decreed on 23.09.1995 against which the respondent Ist set filed Title Appeal No.129 of 1996 for setting aside the said judgment and decree. Petitioner before this Court claims to have purchased part of plot no.2380 in dispute during the pendency of the appeal. The learned counsel for the petitioner submits that on account of purchase in plot no.2380 the petitioner has got interest in the suit property and so he is necessary party to the appeal.

4. The learned counsel for the respondents on the other hand submitted that this writ application is not maintainable in view of the fact that the petitioner had filed petition under Order 22 Rule 10 of the CPC asserting that the interest of appellant devolved upon him during the pendency of the appeal. The suit was filed for partition of land measuring about 10 acres out of which the petitioner claims to



have purchased only five decimals. The land which is being claimed by the petitioner was actually given in the share of the plaintiff/respondent in partition held much earlier to the filing of the title suit. The order refusing to implead the petitioner is appealable under the provision of Order XLIII Rule 1(l) but no appeal has been filed. It has been further submitted that the petitioner had no right to execute any sale deed with respect to any portion of suit property. The petitioner has filed the intervenor petition only to harass the petitioner and to prolong the disposal of appeal.

5. On going through the impugned order and documents on record, I find that the petitioner claims to have purchased a very small piece of land from one of the appellant who had contested the suit. The land was purchased during pendency of appeal. The vendor of this petitioner who is appellant before the court below is contesting the appeal and so it can't be said that he is unrepresented. The learned court below considering this fact has rightly rejected the prayer of the petitioner.

6. In view of above discussions, I do not find any merit in this application and the same is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/O
Uploading Date	22.11.2018
Transmission Date	N/O

