

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20361 of 2014

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1. Lalji Rai
 2. Lal Kumar Rai, both sons of late Bhagera Rai, resident of village-Mainpura,
P.S.Patliputra, District-Patna.

.... Petitioner/s

Versus

1. Smt.sita Devi, widow of Late Doman Rai,
2. Shyam Babu Rai @ Langar Rai &
3. Pappu Rai, both sons of Late Doman Rai, all residents of village-Mainpura,
P.S.Patliputra, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh, Advocate
Mr. Rajesh Kumar Singh, Advocate

For the Respondent/s : Mr. Dr. Alok Kumar Alok, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-06-2018

Petitioners' before this Court are plaintiffs of Title (Partition) Suit No.28 of 2010. They had filed the suit for partition claiming half share in the property mentioned in schedule-1 of the plaint. The defendants did not appear and so the trial proceeded ex-parte and it was dismissed on account of vagueness in the suit property. The petitioners' Title Appeal No. 91 of 2012 which was subsequently withdrawn. Thereafter the present writ application has been filed.

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

3. The learned counsel for the petitioners submits that the respondents before this Court are co-sharer of the petitioners. The suit



was filed for partition of 1 acre 49 decimals land under seven plot numbers. The petitioners had given details of khata number, plot number and area in the schedule of the plaint. The said plots form two blocks on the spot and the petitioner has mentioned boundaries of both blocks. The court heard the suit ex-parte and dismissed observing that the land under partition were not defined under specific boundary. The learned court below further observed that no judgment and decree can be passed in view of provision of order 7 rule 3 of the CPC. In this regard, the learned counsel for the petitioner relied upon a decision reported in the case of **Naresh Chandra Das and others v. Nirmal Chandra Das and others (AIR 1989 Orissa 248)** wherein it has been held that the requirement of the rule itself shows giving boundary of the land is not essential if the survey number or plot number which makes the plot identifiable is given and necessarily a suit cannot be dismissed merely because the boundary is not stated.

4. The learned counsel for the respondent filed counter affidavit and supported the impugned order. It has been submitted that the property in dispute are their exclusive property acquired by their father and so the same cannot be subjected to partition. The learned counsel however does not dispute the identity of disputed land.

5. After going through the materials on record and submission of both the parties, I find that the court below has



misinterpreted the provision of order 7 Rule 3 of the CPC. The provision of order 7 Rule 3 clearly shows that if the suit property is moveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. The petitioners have mentioned the plot numbers and khata numbers of each and every plot with full description at the foot of the plaint as required under order VII Rule 3 of CPC. The observation of learned court below regarding vagueness of suit property is apparently against the material on record.

6. In view of above facts, the impugned order dismissing the suit on account of vagueness in subject matter of dispute is not sustainable and is accordingly set aside. The court below is directed to proceed and decide the suit in accordance with law.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.06.2018
Transmission Date	N/A

