

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8533 of 2014

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1. Dinesh Prasad Gupta S/o Late Shyam Nandan Prasad Gupta Resident of Mohalla - Jogia Math Saraiyaganj, Town Muzaffarpur, P.S. Muzaffarpur, District - Muzaffarpur, At present C/o Banshi Sah Mithai Ki Dukan at Mohalla - Mahendru Near Engineering College, P.O. + P.S. Mahendru, District - Patna.
 2. Utpal Kumar Gupta
 3. Rakesh Kumar Both sons of Late Naresh Pd. Gupta
 4. Urmila Devi W/o Late Naresh Pd. Gupta All resident of Mohalla - Jogia Math Saraiyaganj, Town Muzaffarpur, P.S. Muzaffarpur Town Munsif District - Muzaffarpur at present C/o Banshi Sah Mithai Ki Dukan at Mohalla Mahendry, Near Engineering College, P.O. and P.S. Mahendru Distt. Patna.

... .. Petitioner/s

Versus

1. Sunaina Devi W/o Late Suresh Prasad Gupta.
2. Pankaj Kumar
3. Manish Kumar Gupta
4. Niraj Kumar Gupta All three 2 to 4 sons of Late Suresh Prasad Gupta. All 1 to 4 resident of Atma Ram Gali behind Rani Sah Mandir, P.O. Main Post Office Muzaffarpur, P.S. Town , District - Muzaffarpur.
5. Niraja Kumari D/o Late Suresh Prasad Gupta, W/o Binay Kumar Gupta Resident of Village & P.O. - Bulbaga Madhuban, P.S. Madhuban, District - East Champaran.
6. Smt. Lekha Devi W/o Ravi Baboo Prasad Gupta and daughter of Late Shyam Nandan Prasad Gupta R/o Mohalla - Lama Road, Darjeeling (West Bengal).
7. Smt. Nitu Gupta W/o Dilip Pd. Gupta and Daughter of Late Shyam Nandan Prasad Gupta R/o Mohalla & P.O. Bulbul Chandi, P.S. Bulbul Chands, District Maldah (West Bengal).
8. Manoj Kumar
9. Nukul Kumar
10. Mukesh Prasad All sons of Shiv Chandra Prasad Gupta
11. Suraj Devi
12. Susheela Devi Both daughter of Shiv Chandra Prasad all R/o village + P.O. + P.S. Bhagwanpur, District - Vaishali.
13. Smt. Renu Devi W/o Madan Lal Gupta and daughter of Shyam Prasad Gupta R/o Hospital Road, Sitamarhi, P.O. + P.S. and District - Sitamarhi.
14. Smt. Rekha Devi W/o Dhananjay Prasad and daughter of Late Shyam Nandan Prasad Gupta R/o Mohalla - Shaebganj Town Chapra, P.O. + P.S. and District - Chapra.
15. Smt. Nibha Gupta W/o Naresh Kumar Gupta and daughter of Late Shyam Nandan Prasad Gupta R/o Village and P.O. Damodarpur, P.S. Kanti District - Muzaffarpur.
16. Smt. Urmila Devi widow of Late Naresh Prasad Gupta.
17. Mamta Kumari
18. Pallavi Kumari Both daughter of Late Naresh Prasad Gupta
19. Rita Kumari (Minor) daughter of Late Naresh Prasad Gupta under the guardianship of her mother Urmila Devi All resident of Mohalla - Jogia Math



Saraiyaganj, Town Muzaffarpur, P.S. Muzaffarpur, Town Munsifi District - Muzaffarpur at present C/o Banshi Sah Mithai Ki dukan at Mohalla - Mahendru, near Engineering College, Patna , P.O. and P.S. Mahendru, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Keshav Srivastava, Sr. Adv.
Mr. Bhubneshwar Prasad, Adv.
For the Respondent/s : Mr. Dharmendra Kumar Sinha, Adv.

**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT**

Date : 11-12-2018

Petitioners before this Court are defendants no. 1 and 8 to 10 of Partition Suit No. 230 of 2000 pending in the court of Sub-Judge-II, Muzaffarpur. They have filed this writ application for quashing the order dated 05.02.2014 whereby and whereunder the learned court below refused to pass judgment.

Heard learned counsels for the petitioners and the respondents.

The respondent nos. 1 to 5 are heirs of original plaintiff. The husband of respondent no. 1 had filed the aforesaid suit for partition of land and house mentioned in schedule-I of the plaint. The defendant nos. 1 to 3 and 5 to 12 filed joint written statement. At paragraph 7 of the written statement, they have asserted that the suit is bad for partial partition because the plaintiff has left out to partition the ancestral joint family shops. The defendants further asserted that they have no objection if partition is allowed with respect to suit property as well as the shops and business existing



in the family. The defendants further filed counter claim under Order VIII Rule 6-A of C.P.C. with respect to the property mentioned in schedule-I of the written statement. The petitioners subsequently filed a petition to withdraw the counter claim and prayed to decree the suit to the extent of share as claimed by the plaintiff in the suit. The plaintiff filed objection and the court below rejected the petition observing that the alleged admission is not clear and further that the plaintiffs have sought amendment to add some other ancestral property.

The learned counsel for the respondents submitted that the provision of Order XII Rule 6 is discretionary and not mandatory as held by the Apex Court reported in 2015 (4) PLJR page 42 (S.C.) S.M. Asif vs. Virender Kumar Bajaj wherein the Hon'ble Apex Court at paragraph 9 has held as follows:-

“The words in Order XII Rule 6 CPC “may” and “make such order...” show that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the



claim admitted by one of the parties of his opponent's claim....”

In the case in hand, I find that some of the defendants have prayed to decree the suit. These petitioners had earlier opposed the claim of the plaintiff on the ground of partial partition. The other defendants i.e. defendant nos. 4, 5, 7 and 14 have not supported the case of the petitioners. The plaintiff has filed an amendment petition to add some of his ancestral land which has been sold by some of the co-sharer. The said petition is pending for disposal. Besides that the plaintiff has filed a Title Suit No. 206 of 2000 against the defendants and some others. The learned court below in view of contest of the plaintiff has rejected the prayer of petitioners.

In view of settled principle of law as referred to above I do not find any merit in this writ application and is accordingly dismissed.

(Sanjay Kumar, J)

mkchy/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.12.2018
Transmission Date	N/A

