

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1464 of 2016

1. Most. Anjoriya Wife of late Shivratan Prasad
2. Chhotelal Prasad Son of Late Shivratan Prasad Both are resident of Village- Pokharbhinda Police Station- Kuchaikote District- Gopalganj.

... .. Appellant/s

Versus

1. Gopal Prasad Son of Late Ganesh Prasad.
2. Parmanand Prasad Son of Late Ganesh Prasad
3. Raju Prasad Son of Late Ganesh Prasad
4. Smt. Maheshwari Devi Wife of Shivchand Manjhi daughter of Late Ganesh Prasad.
5. Smt. Muniya Devi Wife of Sri Jaglal Manjhi daughter of late Ganesh Prasad.
6. Most. Guljariya wife of late Sitaram Prasad daughter of late Ganesh Prasad. All are resident of village- Pokharbhinda Police Station- Kuchaikote District- Gopalganj.
7. Janardan Prasad Son of Late Ganesh Prasad Resident of Village- Pokharbhinda, Police Station- Kuchaikote District- Gopalganj.
8. Hiralal Prasad Son of Late Indrasan Manjhi
9. Jawahar Prasad Son of Late Indrasan Manjhi Above both are resident of village- Pokharbhinda Police Station- Kuchaikote, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Umesh Kumar Singh
For the Respondents 8 & 9: Mr. Yogendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 30-11-2018 Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 04.08.2016 passed by learned Sub Judge-X, Gopalganj in Title Suit No. 12 of 1978 by which the learned Sub Judge allowed the petition of respondent No. 8 and 9 to intervene in the suit.

The petitioners are the plaintiffs. The plaintiffs filed the suit for partition of suit land. According to the case of the



plaintiffs Kunjal Manjhi had three sons, namely, Ganesh Prasad, Sitaram Prasad (plaintiff) and Sheoratan Prasad (defendant No.1). Defendants No.2 to 7 are sons, daughters and wife of Ganesh Prasad. The defendants contested the suit by filing written statement. The suit was decreed and preliminary decree was passed. The plaintiff and defendant No. 1 and 2 preferred First Appeal against the preliminary decree but the appeal was dismissed. The petition for preparation of final decree was filed. In the meantime, Hiralal Prasad and Jawahar Prasad, sons of Late Indrasan Manjhi, filed petition on 07.03.2013 Under Order I rule 10(2) of the C.P.C. for making them as defendants. The case of interveners is that Kunjal Dushadh had four sons, namely, Indrasan Manjhi, Ganesh (defendant No. 7), Sitaram (plaintiff) and Shivratn Prasad (defendant No.1) but this fact was concealed and the plaintiff and defendants have fraudulently obtained the preliminary decree. The petitioners fled rejoinder stating therein that it is not the case of any party that Kunjal Dushadh had four sons. Kunjal Dushadh had three sons and the present suit has already been decided and preliminary decree is passed. The same has been confirmed by the High Court and, therefore, the question that Hiralal Prasad and Jawahar Prasad are sons of Indrasan Manjhi, fourth son of



Kunjal Dushadh, cannot be decided in the present case but the learned Sub Judge allowed the intervention petition of Hiralal Prasad and Jawahar Prasad, respondent Nos. 8 and 9 on 04.08.2016. It is submitted that the order is illegal and not sustainable in the eye of law. Kunjal Manhi had three sons, Ganesh, Sitaram and Shivratan. Indrasan Manjhi was not the son of Kunjal Dushadh. The interveners are claiming to be fourth son of Kunjal Dushadh. The suit is at the stage of preparation of final decree and at this stage in a suit for partition the question of relationship of interveners cannot be decided and the learned Sub Judge has committed jurisdictional error in allowing the petition of the interveners.

The learned counsel for the respondent No. 8 and 9 submits that the plaintiff and defendants in collusion with each other filed the partition suit and got preliminary decree by playing fraud. Kunjal Dushadh had four sons, namely, Indrasan, Ganesh, Sitaram and Shivratan. The plaintiff did not make the legal heirs of Indrasan Manjhi as party in the suit. Indrasan Manjhi was son from first wife of Kunjal Manjhi and this fact was completely concealed. It is further submitted that genealogical table appended with the petition issued by the Circle Officer clearly shows that Kunjal Manjhi had four sons. A



photo copy of sale deed executed on 18.06.1998 by Nand Kumar Manjhi shows that Hiralal Prasad, son of Indrasan Manjhi, has joined the sale deed along with Janardan Prasad and Gopal Prasad, sons of Ganesh Prasad and Shiv Ratan Prasad, other two sons of Kunjal Manjhi. The learned Sub Judge has considered all the facts and held that plaintiff and defendants of the suit have concealed the fact that Indrasan Manjhi was son of Kunjal Dushadh. The final decree is in continuation of the preliminary decree and preliminary decree can be amended on happening of certain events and if the court finds that the preliminary decree has been obtained by playing fraud, the parties can be added even after passing of preliminary decree in the interest of justice and to avoid multiplicity of the suit in stead of driving such persons who is or are entitled to get share in the suit property. The learned Sub Judge has discussed all the facts and the provision as contained in Order I Rule 10(2) of the Code of Civil Procedure that the Court may at any stage of the proceedings finds that applicant is interested or a necessary or proper party can implead him as plaintiff or defendant in the suit. It is further submitted that even land purchased by Hiralal Prasad, son of Indrasan Prasad, vide sale deed dated 18.06.1998 along with other plaintiffs and



defendants have been included in the partition suit. Therefore, the impugned order does not require any interference under supervisory jurisdiction of this court as the same does not suffer from any jurisdictional error.

Having considered the submission of both sides and on perusal of the records, I find that plaintiff and defendants have brought the suit for partition of the land mentioned in schedule of the plaint and the preliminary decree has already been passed. The preliminary decree has already been confirmed but during the pendency of final decree the respondent No. 8 and 9 filed petition saying that the preliminary decree was obtained fraudulently by concealing material facts that Kunjal Manjhi had four sons and plaintiff and defendants are sons and heirs of three sons of Kunjal Manjhi but the legal heir of Indrasan Manjhi have been left out and the preliminary decree has been passed. The preliminary decree defines only the shares of the plaintiff and defendants and if it is found that intervener/ respondents are in fact legal heirs of Kunjal Manjhi, being son of Indrasan Manjhi, in that event preliminary decree can be varied as the same has been obtained by playing fraud and concealing the facts that Indrasan Manjhi was also one of the sons of Kunjal Manjhi. This court has also held in the case



of Anjali Sinha & Ors. v. Ashok Sinha (C. Misc. No. 327 of 2017) that preliminary decree can be varied at the instance of a necessary party, deceitfully left out to be made a party, even at the stage of preparation of final decree and such intervener should not be driven to file a separate suit.

Having considered the facts aforesaid, I do not find any illegality or jurisdictional error in the impugned order. This Civil Misc. petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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