

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21781 of 2012

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1. Biran Singh Son of Late Ram Singar Singh, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda.
 2. Santosh Kumar Singh Minor Son of Sri Biaran Singh under the guardianship of his father and natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 3. Sanjeet Kumar Singh Minor Son of Sri Biaran Singh under the guardianship of his father and natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 4. Sujeet Kumar Singh Minor Son of Sri Biaran Singh under the guardianship of his father and natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 5. Nutan Kumari Daughter of Sri Biaran Singh under the guardianship of her father and natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 6. Harendra Singh Son of Late Ram Singar Singh, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 7. Rohit Kumar Minor Son of Shri Harendra Singh, under the guardianship of his father and well-wisher his father Sri Harendra Singh, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 8. Guddu Singh Son of Late Ram Singar Singh, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 9. Mostt. Pramila Devi Wife of Late Mahendra Singh, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 10. Vikki Kumar Minor Son of Late Mahendra Singh under the guardianship of his mother mostt. Pramila Devi natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 11. Golu Kumar Minor Son of Late Mahendra Singh under the guardianship of his mother Mostt. Pramila Devi natural guardian and well-wisher, resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda
 12. Suraj Kumar Minor Son of Late Mahendra Singh under the guardianship of his Mother Mostt. Pramila Devi natural guardian and well-wisher resident of village- Chaurasi, P.S.- Hilsa, At Present P.S.- Karai Parshurai, District- Nalanda.

.... Petitioner/s

Versus

1. Sri Munindar Singh Son of Late Chandrika Singh, resident of village- Chaurasio, P.S.- Hilsa, at present P.S.- Karai Parashurai, District- Nalanda.
2. Sri Awadh Narayan Singh Son of Late Laxmi Singh, resident of village- Chaurasi, P.S.- Hilsa At Present P.S.- Karai Parashurai, District- Nalanda
3. The State of Bihar through the Secretary, Department of Law, Govt. of Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar, Adv.
For the Respondent/s :



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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 02-04-2018

The petitioners have filed this application for quashing the order dated 30.08.2012 passed by Sub-Judge-IV, Patna City in T.S. No. 139 of 2008. The learned court below, as per impugned order, transposed the defendant 1st party in the category of plaintiffs on the petition of defendant 2nd set.

2. Heard learned counsel for the petitioners.

3. It appears that the plaintiffs filed the aforesaid T.S. No. 139 of 2008 on the file of Sub-Judge for declaration that the land mentioned in Schedule-I of the plaint belongs to the joint family of plaintiff and defendant 1st party and that the defendant 2nd set has not acquired any title over the said land on the basis of sale deed which was executed by defendant 1st party in his favour. The defendant 2nd set filed a petition before the court below under Order 1 Rule 1, 3 and 10 (2) read with 151 of Code of Civil Procedure alleging therein that the defendant 1st set and plaintiffs are in collusion with each other which is evident from the fact that the defendant 1st party instead of filing written statement, sworn an affidavit admitting the case of plaintiffs. The plaintiffs have not sought any relief against the defendant 1st set. In view of submission of learned counsel for the defendant 2nd set, the court below transposed the defendant 1st set to the category of plaintiffs.

4. Admittedly the suit has been filed for declaration with



respect to a sale deed which was executed by the defendant 1st set in favour of the defendant 2nd party. The defendant 1st set has supported the case of plaintiffs. The plaintiffs have serious objection that the defendant 1st set cannot be transposed in the category of plaintiffs against their wish as they are dominus litus of the suit. The defendant 1st set has sold the land belonging to joint family against the wishes of the plaintiffs and so they have sought relief against all the defendants including the defendant 1st set. In such circumstances, the defendant 1st set cannot be transposed in the category of plaintiffs on the petition of defendant second set.

5. In view of above facts, I find that the order transposing the defendant 1st set in the category of plaintiffs on the application of defendant 2nd party is not sustainable. As such the impugned order is set aside and this application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10/04/2018
Transmission Date	

