

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.845 of 2016

=====

1. Kailash Prasad son of Late Bantilal Prasad, resident of Village- Amar Chhatauni, At Present, village- Pataura, both P.S.- Chhatauni, District- East Champaran.

.... Appellant/s

Versus

1. Roz Mohammad son of Late Abdul Rashid,
2. Yasin Mian son of Roz Mohammad,
3. Israel Mian son of Roz Mohammad,
4. Joharram Mian son of Roz Mohammad,
5. Meraj Mian son of Roz Mohammad,
6. Munna Mian son of Roz Mohammad,
7. Nayeema Khatoon daughter of Roz Mohammad, All residents of village- Amar Chhatauni, P.S.- Chhatauni, District- East Champaran.
8. Ramchandra Prasad son of Late Vishwanath Prasad, resident of village- Madhurapur, P.S.- Pipra, P.O.- Bakarpur, District- East Champaran.
9. Shivji Prasad,
10. Sushil Prasad,
11. Prabhu Prasad, Respondent nos. 9 to 11 sons of Late Vishwanath Prasad and residents of village- Madhurapur, P.S.- Pipra, P.O.- Bakarpur, District- East Champaran.
12. Prabha Devi wife of Sharda Prasad and daughter of Late Vishwanath Prasad, resident of village- Manichhapra, P.O.- Madhopur Gobind via Mehsi, P.S.- Chakia, District- East Champaran.
13. Sitaram Prasad, son of Late Chaturbhuj Sahay, resident of Mohalla- Raniganj, P.O.- Chakia, P.S.- Chakia, District- East Champaran.
14. Manju Devi wife of Bharat Lal Prasad, resident of village- Amar Chhatauni, P.O.- Amar Chhatauni, P.S.- Motihari Muffasil, District- East Champaran.
15. Krishna Devi wife of Lallan Prasad,
16. Chunnu Prasad son of Lallan Prasad,
17. Bachchu Prasad son of Lallan Prasad, Respondent nos. 15 to 17 residents of village- Pataura, P.O.- Pataura, P.S.- Pataura, Motihari Muffasil, District- East Champaran
18. Babita Devi wife of Vikash Chandra Verma, daughter of Lallan Prasad, resident of village- Sarswati Nagar, Haribatika Chowk, Bettiah, P.O. & P.S.- Bettiah, District- West Champaran.
19. Anjani Kumar Srivastava son of Bhagwan Prasad,
20. Sangeeta Kumari wife of Bhagudhan Prasad daughter of Bhagwan Prasad, resident of village- Ruganj Chhapra, P.O. & P.S.- Chhapra, District- Saran.
21. Sita Devi, wife of Nirmal Chand daughter of Bhagwan Prasad, resident of village- Ratanpura Chhapra, P.O. & P.S.- Chhapra, District- Saran.
22. Sunita Kumari, wife of Sunil Kumar daughter of Bhagwan Prasad, resident of village- Gandhi Chowk, P.O. & P.S.- Chhapra, District- Saran.
23. Kamal Devi wife of Umashankar Prasad, daughter of Murari Prasad, resident of village- Domovirti Olahan, P.O.- Mehna, P.S.- Harsidhi, District- East Champaran.
24. Nirmala Devi, wife of Baidyanath Prasad daughter of Murari Prasad



resident of village- Sundarpatti, P.O.- Siraha, P.S.- Pakaridayal, District- East Champaran.

25. Nityanand Prasad son of Paras Prasad, resident of village- Chhapra Bahas, P.O.- Chhapra Bahas, P.S.- Sugauli, District- East Champaran.

26. Girendra Kishore Verma son of Nityanand Prasad, resident of village- Chhapra Bahas, P.O.- Chhapra Bahas, P.S.- Sugauli, District- East Champaran.

27. Pramila Devi wife of Sunil Kumar daughter of Nityanand Prasad, resident of Mohalla- Patel Nagar, near Dr. Bhattacharya, Patna, P.O.+P.S.+District- Patna.

28. Rambabu Prasad son of Late Batilal Prasad,

29. Shambhu Prasad, son of Late Bantilal Prasad, both residents of village- Amar Chhatauni, at present, village- Pataura, P.O.+P.S.- Chhatauni, District- East Champaran.

30. Sabuja Kuer wife of Ramchandra Prasad, daughter of Bantilal Prasad, resident of village- Matia, P.S.- Parkardeyal, District- East Champaran.

31. Ramdeo Prasad son of Late Radhika Prasad,

32. Anjani Kumar son of Ramdeo Prasad,

33. Ashwani Kumar son of Ramdeo Prasad, respondent nos. 32 to 34 Residents of Mohalla- Bhawanipur Zirat near S.K.S. Women's College, P.S.- Chhatauni, P.O.- Motihari, District- East Champaran.

34. Mala Sinha wife of Vinay Kumar daughter of Ramdeo Prasad, resident of village- Ahiyapur, in the house of Police Inspector, P.S.- Ahiyapur, District- Muzaffarpur.

35. Renu Srivastava wife of Bibhuranjan Prasad Srivastava, daughter of Ramdeo Prasad, resident of Mohalla- Srikrishna Nagar, behind Gayatri Mandir, P.O.- Motihari, P.S.- Motihari Town, District- East Champaran.

36. Sudha Srivastava wife of Manjeet Kumar, resident of village & P.O.- Madhopur, P.S.- Majhauria, District- West Champaran.

37. Singari Devi wife of Nagendra Prasad, daughter of Basdeo Prasad, resident of village- Madhopur, Sansaraiya, P.O.- Shankar Saraiya, P.S.- Turkauliya, District- East Champaran.

38. Radhika Devi wife of Kaushal Prasad daughter of Basdeo Prasad, resident of village- Patkauliya, P.O.- Takia, P.S.- Chakia, District- East Champaran.

39. Baban Prasad, son of Kalika Prasad,

40. Rajendra Prasad, son of Kalika Prasad, both residents of village- Damodarpur, P.O.- Damodarpur, P.S.- Pipra, District- East Champaran.

41. Bimla Devi, wife of Rajendra Prasad, daughter of Kalika Prasad, resident of village- Parsauni Pandey, P.O.- Damodarpur, P.S.- Pipra, District- East Champaran.

42. Punita Devi wife of Hemant Prasad, daughter of Kalika Prasad, resident of village- Damodarpur, P.O.- Damodarpur, P.S.- Pipra, District- East Champaran.

43. Dadan Prasad son of Rameshwar Prasad, resident of village- Damodarpur, P.O.- Damodarpur, P.S.- Pipra, District- East Champaran.

44. Krishna Prasad son of Suruj Prasad, resident of village- Amar Chhatauni, P.O.- Pataura, P.S.- Motihari Town, District- East Champaran.

45. Kalawati Devi wife of Mohan Prasad daughter of Suruj Prasad, resident of Mohalla- Kalibag, Gali No. 2, P.O.+P.S.- Bettiah, District- West Champaran.



.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Umesh Chandra Verma

For the Respondent/s : Mr. Sarbottam Kumar Sarkar

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 10-09-2018 Heard the learned counsel appearing for the petitioner, the learned counsel for the respondent Nos. 1 to 7 and the learned counsel appearing for respondent No.8.

The plaintiff/ respondent No.8 filed Partition Suit No. 511 of 2009 and during the pendency of the suit respondent Nos. 1 to 7 filed petition under Order 1 Rule 10 of the Code of Civil Procedure for impleading them as defendants in the suit as they are descendants of Bibi Sakina Khatoon, who purchased the land from Manju Devi, wife of Bharat Lal Prasad, and the learned Sub Judge by the order dated 17.12.2015 allowed the petition of the interveners to implead them as defendants holding that Manju Devi executed the sale deed on 04.03.1987 with regard to 10 dhurs of land of Khesra No. 1153, Khata No. 193 in favour of Bibi Sakina Khatoon. The interveners, respondent/ Nos. 1 to 7 are the descendants of Bibi Sakina Khatoon and they have got direct interest in the said property, which is also subject matter of the partition suit.

The learned counsel for the petitioner submits that



the learned Sub-Judge has committed illegality by impleading respondent Nos. 1 to 7 as defendants in the suit without taking into consideration the facts that defendant No.21, the petitioner, filed Title Suit No. 261 of 1985 against respondent No. 14, Manju Devi, as well as her husband, Bharat Lal Prasad, challenging the alienation made by Bharat Lal Prasad in favour of his wife, Manju Devi, and the same land is also subject matter of the present suit. Title Suit No. 261 of 1985 was allowed and the alienation made by Bharat Lal Prasad in favour of Manju Devi was found illegal with regard to the land including the land of RSP No. 1153 vide judgement and decree dated 31.03.1992. Respondent No. 14, Manju Devi, and her husband filed Title Appeal No. 62 of 1992 which has also been dismissed in the year 2015. The present respondent Nos. 1 to 7 had also filed petition for their impleadment as parties in the aforesaid Title Appeal but the same was rejected by the appellate court.

It is submitted that respondent Nos. 1 to 7 are again trying to agitate the same matter in collusion with plaintiff with regard to their right and title over the land of plot No. 1153 but alienation made by Bharat Lal Prasad in favour of his wife, Manju Devi, has been found illegal and, therefore, the respondent Nos. 1 to 7 have got no right over the land and there is no point to



implead respondent Nos. 1 to 7 in the present suit.

The learned counsel for the respondent Nos. 1 to 7 submits that respondent Nos. 1 to 7 are descendants of Bibi Sakina Khatoon, who had purchased the land of plot No. 1153, Khata No. 193 and the interest of respondent Nos. 1 to 7 are also involved in the suit as Bibi Sakina Khatoon purchased the land from Manju Devi.

I find no force in the submission of learned counsel for the respondent Nos. 1 to 7 firstly on the ground that the sale deed executed by Manju Devi in favour of Bibi Sakina Khatoon and the alienation made by Bharat Lal Prasad in favour of Manju Devi, vendor of Bibi Sakina Khatoon, came in question in Title Suit No. 261 of 1985 and the alienation made by Bharat Lal Prasad in favour of his wife, Manju Devi, was found illegal. Therefore, Manju Devi had no right to sell the property alienated in her favour by her husband and this dispute has already been set at rest. Manju Devi and Bharat Lal Prasad also filed Title Appeal No. 62 of 1992 and the same was dismissed in the year 2015. Therefore, the impleadment of respondent Nos. 1 to 7 in the present suit on the basis of sale deed executed by Manju Devi is not sustainable as the alienation made by Bharat Lal Prasad in favour of Manju Devi has already been declared illegal.



Taking into consideration the facts aforesaid, I find that the learned Sub-Judge has committed illegality in allowing the petition of respondent Nos. 1 to 7 to be impleaded as defendants. Accordingly, the order dated 17.12.2015 is set aside and the petition of respondent Nos. 1 to 7 for their impleadment is dismissed. Thus, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

