

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5349 of 2015

Pahwari Rai, son of Late Jagannath Rai, resident of Village - Gulariya, P.O.-
Khaira Tola, P.S.- Bhitaha, District - West Champaran.

... .. Petitioner

Versus

1. Suresh Rai, son of Ramagya Rai
2. Binod Rai
3. Manoj Rai,
Both sons of Chandrika Rai.
4. Ajay Rai, son of Ram Chandra Rai.
5. Most. Neelam, wife of Late Subhash Rai.
6. Pintu Rai.
7. Tuntun Rai.
8. Abhay Rai, all sons of Late Subhash Rai.
All are resident of Village - Gulariya, P.O.- Khaira Tola, P.S.- Bhitaha, District
- West Champaran.
9. Awadhesh Sahi
10. Umesh Sahi
Both sons of Chandradhari Sahi, both resident of Mauza Turpatti, Mahuawa,
P.O. & P.S.- Turpatti, District - Kushinagar (U.P.).
11. Ingrawati Devi, daughter of Chandradhari Sahi, wife of Amleshwar Rai,
resident of Mauja Mukundpur, P.O.- Taraiya, District - Kushinagar (U.P.).
12. Ramawati Devi, daughter of Chandradhari Sahi, wife of Kamleshwar Rai,
Resident of Village - Madhopur.
13. Shobha Devi, daughter of Chandradhari Sahi
Resident of Mauza, Diwani, P.O.- Jataha, District - Kushinagar (U.P.).
14. Gorakh Rai, son of Late Radha Rai.
15. Dhelman Rai, son of Late Gorakh Rai,
Both resident of village & P.O.- Raja Pakar, P.S.- Turpatti, District -
Kushinagar (U.P.).
16. Kailash Gadi, son of Gasai Gadi, resident of Mauza Tumkuha, P.O.- Katahar,
P.S.- Dhanha, District - West Champaran.
17. Vishwanath Gadi, son of Sitaram Gadi, resident of Mauza - Khalwa Patti,
P.O.- Katahar, P.S.- Dhanha, District - West Champaran.
18. Chandrika Teli, son of Sukhdeo Teli, resident of Village - Khalwa Patti, P.O.-
Katahar, P.S.- Dhanha, District - West Champaran.
19. Ramesh Rai, son of Harihar Rai, resident of Village - Gulariya, P.O.- Dhanha,
P.S.- Bhitaha, District - West Champaran.
20. Kasi Pandey, son of Baiju Pandey, resident of Mauja - Pali Tola, Gulariya,
P.O.- Khaira tola, P.S.- Bhitaha, District - West Champaran.
21. Jivit Kurmi, son of Mangru Kurmi, R/O Mouja - Pali Tola, Gulariya, P.O.-
Khaira tola, P.S.- Bhitaha, District - West Champaran.
22. Harilal Kurmi, son of Banki Kurmi, R/O Mouja - Pali Tola, Gulariya, P.O.-
Khaira tola, P.S.- Bhitaha, District - West Champaran.
23. Rajesh Kurmi, son of Brij Narain Kurmi, R/O Mouja - Pali Tola, Gulariya,
P.O.- Khaira tola, P.S.- Bhitaha, District - West Champaran.
24. Gamlawati Devi, daughter of Late Jagannath Rai, wife of Late Mangal Singh,
resident of village - Pachar, Tahsil Hara, District - Kushinagar (U.P.).



... .. Respondents

Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondent/s : Mr. B.N. Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 05-12-2018

Plaintiff of Partition Suit No.42 of 2004 has filed this writ application for quashing the order dated 13.02.2015 passed by Subordinate Judge II, Bagaha, West Champaran whereby and whereunder prayer of intervener defendant for impleading her as party to the suit under Order 1 Rule 10(2) of CPC was allowed.

2. Heard learned counsel for petitioner and the respondents.

3. Petitioner filed the aforesaid suit for partition of his ancestral property claiming share to the extent of $\frac{1}{2}$ in the land mentioned in Schedule II of the plaint. The case of plaintiff is that his father died leaving behind him, his three brothers and a sister. Out of them, his sister died leaving behind her husband and a son who have been impleaded as defendant nos.19 and 20 (respondent nos.14 and 15 before this court). The defendant nos.1, 2, 5, 6, 8 to 11 and 13 filed their written statement denying the claim of plaintiff. As against the statements made in paragraph 6 of the plaint, the defendants have admitted that Jagarnath Rai (father of



plaintiff) died about 20 years ago and his wife also died leaving behind four sons and one daughter but his daughter is also dead. Thus, the defendants have admitted that the sister of plaintiff no.1 is dead. The intervener Gamlawati Devi claiming to be sister of plaintiff and daughter of Jagarnath Rai filed a petition for impleading her as party to the suit which was allowed.

4. The learned counsel for the petitioner submitted that the intervener Gamlawati Devi is a fictitious lady set up by defendants only to grab the land of plaintiff. The defendants have brought into existence a registered sale deed dated 08.06.2007 alleged to be executed by Gamlawati Devi (a fictitious lady) in their favour. The defendants have already admitted that Gamlawati Devi, who was sister of the plaintiff, has died. After closing the evidence of both the parties, the defendants brought into existence the aforesaid registered sale deed and managed to file an intervener petition at the stage of argument. The said sale deed covers an area measuring 2 bigha 3 katha in favour of some of the defendants and some other persons. The defendants are estopped from asserting the fact the intervener Gamlawati Devi is alive. The learned court below has not appreciated the admission of defendants as pleaded in paragraph 6 of the written statement. It was also submitted that the petition of the said Gamlawati Devi



was earlier rejected on 23.07.2009 and after one year of said rejection order, the intervener filed another petition on 28.06.2010. So the impugned order impleading the intervener as party to the suit is not sustainable and is fit to be set aside.

5. The learned counsel for the respondents, on the other hand, submitted that the intervener is sister of plaintiff and the plaintiff mala fide did not implead the intervener as party to the suit in order to grab her share. The statement of defendants in written statement is not binding on the intervener and so the court below in order to adjudicate the dispute between the parties has rightly impleaded the intervener as party to the suit. The impugned order does not require any interference and this writ application is fit to be dismissed.

6. On going through the pleadings of both the parties, I find that the defendants who are contesting before the court below have admitted the pleading of the plaintiff to this effect that the sister of plaintiff Gamlawati Devi is dead. The suit was filed in the year 2004. The defendants filed written statement and after evidence of both the parties, the suit was fixed for argument. The defendants got a sale deed dated 08.06.2007 executed in favour of some of the defendants and some other persons and thereafter filed a petition to adduce further evidence. In the meantime, Gamlawati



Devi filed a petition on 29.01.2008 which was rejected on 23.07.2009. After one year of said rejection order, the said Gamlawati Devi again filed a petition on 28.06.2010. The plaintiff filed rejoinder denying the claim of intervener. The learned counsel for the respondents does not dispute the submission made in the written statement as regards death of Gamlawati Devi. The learned court below has overlooked the statement of defendants given in the written statement. The plaintiff has impleaded the husband and son of said Gamlawati Devi as party to the suit. The sale deed with respect to suit property has been executed during the pendency of suit at the fag end of trial when the case was fixed for argument. The impleadment of intervener at this stage would certainly prolong the disposal of the suit.

7. In view of above discussions, I find that the order impleading the intervener as defendant to the suit at the stage of argument is not sustainable and is set aside. This writ application is accordingly allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.12.2018
Transmission Date	

