

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10107 of 2012**

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Shambhu Prasad Yadav Son of Dharikshan Yadav, resident of Naraiyeeपुर,  
Police Station Bagha P.O. Naraiyeeपुर, District- West Champaran.

... .. Petitioner/s

Versus

1. Amit Kumar Yadav S/o Harendra Pd. Yadav null
2. Niraj Kumar Yadav son of Harendra Pd. Yadav
3. Sanjay Kumar Yadav son of Harendra Pd. Yadav All of Village+ P.O. Naraiyeeपुर, Police Station- Bagha, District West Champaran.
4. Champa Devi wife of Rajeshwar Pd. Yadav
5. Jitendra Yadav son of Rajeshwar Pd. Yadav
6. Ajoy Kr. Yadav son of Rajeshwar Pd. Yadav All of Village+ P.O. Naraiyeeपुर, Police Station- Bagha, District West Champaran.
7. Meera Devi d/o Dharikshan Pd. Yadav, wife of Raghvendra Pd. Yadav of village Jamunapur Police Station Laukaria, West Champaran.
8. Pramila Devi d/o Dharikshan Pd. W/o Shyam Badan Yadav resident of Village- Parwaha, P.O. & P.S. Semra, District West Champaran.
9. Tara Devi d/o Dharikshan Pd. Yadav w/o Umesh Yadav resident of Village & P.O. Narayeeपुर, P.S. Bagha, District West Champaran.
10. Usha Devi daughter of Dharikshan Pd. Yadav wife of Ashok Kr. Yadav, of village Gurchurwa, P.S. Manjhwalia District West Champaran.
11. Lal Babu Yadav
12. Binod Yadav
13. Birendra Yadav @ Birendra Yadav
14. Nirmala Devi Sl. No. 13 to 16 all are sons and daughter of Sri Radhey Shyam Yadav resident of Yamunapur, P.O. Parashani P.S. Lankria, West Champaran.
15. Umesh Nath Mishra @ Bashistha Nath Mishra son of Late Dwijesh Nath Mishra, resident of Village & P.O. Narayeeपुर, P.S. Bagha, District West Champaran.
16. Mohan Mali son of Late Parikshan Mali, resident of Village- Narayeeपुर Police Station- Bagha, District- West Champaran.
17. Umesh Nath Mishra @ Bashistha Nath Mishra S/O Late Dwijesh Nath Mishra R/O Village & P.O.- Narayeeपुर Bagha, West Champaran
18. Mohan Mali S/O Late Parikshan Mali R/O Villge- Narayeeपुर Police Station - Bagha, West Champaran

... .. Respondent/s

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**Appearance :**

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|---------------------------------|---|----------------------------------------------------------------------|
| For the Petitioner/s            | : | Mr. Ashok Kumar Sinha, Advocate<br>Mr. Shyam Sunder Pandey, Advocate |
| For the Respondent no.17        | : | Mr. Abhitabh Kumar, Advocate                                         |
| For the Respondent nos. 2 to 16 | : | Mr. Ashok Kumar, Advocate.                                           |

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

**Date : 27-11-2018**

This writ application has been filed for quashing the  
order dated 20.04.2012 passed by Sub Judge-Ist, Bagaha in



Execution Case No.23 of 2010 whereby and whereunder the learned court below entertained the petition of the respondents and ordered to register a Miscellaneous Case under Order 21 Rule 98 to 101 read with Section 151 of CPC. The court below further stayed the proceeding of execution case till the disposal of miscellaneous application filed by respondent no.17.

2. Heard learned counsel for the petitioners and the respondent no.17.

3. It appears that the petitioner filed Partition Suit No.10 of 2008 against his father and brothers which ended in compromise as per decree dated 11.11.2008. Thereafter, this petitioner filed execution case praying therein to carve out a separate Patti in the suit property and also to put him in exclusive possession over the same. The respondent no.17 filed an application under Order 21 Rule 97 to 101 read with Section 151 CPC praying therein to adjudicate his right title and interest. The learned court below after hearing both sides allowed the petition filed by respondent no.17 and registered a miscellaneous case for deciding the dispute between the parties.

4. After hearing both sides and on going through the documents on record, I find that the father of this petitioner had filed two suits bearing Title Suit No.47 of 1997 and Title Suit



No.22 of 1997 against the respondent no.17 for declaration of title and recovery and possession. The father of this petitioner further sought relief of injunction against respondent no.17. In the said suit, the dispute was with respect to portion of plot no.692/30 which is also subject matter of present litigation. The aforesaid two suits were dismissed. The present petitioner is one of the son of plaintiff of Title Suit No.47 of 1997 and 22 of 1997 and he has filed Partition Suit No.10 of 2008 against his father, brothers and other family members. In this Partition Suit No.10 of 2008, this petitioner and his family members jointly filed compromise petition and it was decreed in terms of compromise. The plot no.692/30 area 13 katha was also the subject matter of partition. By the compromise petition, the said plot has been given in the share of petitioner and his father.

5. The learned counsel for the petitioners submits that the respondent no.17 has no right to intervene in the present execution case. The total area of plot no.692/30 was 5 bighas, 16 kathas and 12 dhurs out of which only 13 kathas is subject matter of partition which was acquired by the ancestor of petitioner as per lease.

6. The learned counsel for the respondent no.17 on the other hand submits that the plot bearing no.692/30 is his ancestor



land. He is heir of ex-landlord and plot no.692/30 was allotted in his share in the partition suit no.56/1928 which was disposed of on 05.05.1994 by Sub Judge-Motihari. As against this, the petitioner has no right title or interest in the land of plot no.692/30. The petitioner was aware with this facts and that the petitioner is claiming right, title and possession over the said land. The learned court below while allowing the petition filed by respondent no.17 has observed that the petitioner has suppressed the fact as regards filing of two suits by the father of the petitioner.

7. In view of above discussions, I find that the court below has rightly allowed the petition filed by respondent no.17 for determining the right title and interest of the parties in the suit property. This writ application being devoid of merit is accordingly dismissed. The court below is directed to expedite the miscellaneous case registered on the petition of respondent no.17.

B.Kr./-

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**(Sanjay Kumar, J)**

