

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1284 of 2018

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1. Dr. Pradeep Kumar Pandey, Son of Late Narvadeshwar Pandey, Resident of Village-Chakhani, P.O. Rajwatia, P.S. Bagha Dist. West Champaran.

.... Appellant/s

Versus

1. Alok Kumar Pandey Son of Late Narvadeshwar Pandey
2. Arsh Kumar Pandey, Son of Dr. Pradeep Kumar Pandey
3. Most. Prabha Pandey Wife of Late Narvadeshwar Pandey
4. Ashwarya Kumar Pandey Son of Arsh Kumar Pandey, All Resident of Village-Chakhani, P.O. Rajwatia, P.S. Bagha Dist. West Champaran.
5. Archana Mishra @ Rita Mishra Wife of Bharath Mishra Resident of Village-Asharaya, 68 W-1, Saket Nagar, Kanpur-14 (UP)
6. Dwijendra Nath Tiwary Son of Late Vishwanath Tiwary
7. Digamber Nath Tiwary Son of Sri Dwijendra Nath Tiwary Both Resident of Mauza Dumawalia Ward NO. 9 Nagar Parishad Bagha P.O. Naraipur P.S. Bagha District-West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sandeep Kumar

For the Respondent/s : Mr. Nawal Kishore Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

2 01-10-2018 Heard the learned counsel for the petitioner and the learned counsel for the respondent No.3.

The petitioner has filed this Civil Misc. petition against the order dated 23.07.2018 passed in Partition Suit No. 156 of 2017 by which the court ordered for recording evidence of defendant No.3/ respondent No.3 firstly.

The petitioner is defendant No.1 in the suit. The defendant No.3 filed petition along with her medical prescriptions stating that she is ill, infirm and old lady. She is unable to move



freely, therefore, her evidence should be recorded first in view of provision as contained in Order XVIII Rule 16 of the C.P.C. The learned Sub Judge, Bagha allowed the petition of defendant No.3. Defendant No.1 being aggrieved by the aforesaid order filed this Civil Misc. petition.

The learned counsel for the petitioner submits that petitioner filed rejoinder to the petition of defendant No.3 and stated that respondent No.3 executed several sale deeds during the pendency of the suit. She regularly used to visit Bagha and other different places. She resides in Patna and, therefore, her physical condition is not so bad that her evidence should be recorded on priority basis.

From perusal of the order of learned Sub Judge, I find that the learned Sub Judge after perusing her medical prescription as well as physical condition ordered for examination of defendant No.3. Order XVIII Rule 16 of the C.P.C. vests power in the court that in case the court finds that any person is likely to go beyond jurisdiction of the court or the person is physically infirm and old the court may order for recording evidence of such person at the first instance in presence of all the parties and the evidence of such person shall be taken into consideration at the time of hearing of the suit. However,



considering the facts aforesaid, I find no jurisdictional error or illegality in the order of learned Sub Judge as the learned Sub Judge has simply taken into consideration the physical condition of defendant No.3 and allowed her petition for recording her evidence. Accordingly, this Civil Misc. petition is dismissed.

(Prabhat Kumar Jha, J)

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