

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.206 of 2018

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1. Sant Kumar Jha Son of Late Ramakant Jha
2. Pramila Devi alias Pramila Jha, Wife of Sri Sant Kumar Jha, Both residents of Village - Panchor Krishna, Tole - Champabari, Police Station - Bishanpur (Hayaghat), District - Darbhanga.

.... Petitioners

Versus

1. Bishwambhar Jha Son of Late Ramakant Jha
2. Smt. Geena Jha @ Geena Devi, Wife of Bishwambhar Jha, Both residents of Village - Panchov Krishna, Tole - Champabari, Police Station - Bishanpur (Hayaghat), District - Darbhanga.
3. Laxmi Narayan Jha Son of Late Jaydeo Jha Resident of Village - Madhupur, Police Station - Jalley, District - Darbhanga.
4. Parmeshwari Devi Wife of Late Mahakant Mishra Resident of Village - Rakhwari, Police Station - Rudrapur, District - Madhubani.
5. Narmada Devi Wife of Shankar Choudhary Resident of Village - Pindrauch, Police Station - Kamtaul, District - Darbhanga.
6. Manoj Kumar Jha
7. Lalit Kumar Jha Both Sons of Late Jaydeo Jha Resident of Village - Madhupur, Police Station - Jalley, District - Darbhanga.
8. Shanti Devi Daughter of Late Jaydeo Jha and wife of Pasand Choudhary Resident of Village - Karaj, Police Station - Jalley, District - Darbhanga.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Lalit Narayan Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 30-07-2018

Heard learned counsel for the petitioners.

The petitioners are the defendant no.1 and 2 in the court below. The petitioners filed this Civil Miscellaneous petition to set aside the order dated 20.01.2018 passed in Partition Suit No.60/2014 by learned Sub-Judge-VII, Darbhanga by which the petition of the petitioners for rejection of plaint under Order 7



Rule 11 of the C.P.C. has been rejected.

Learned counsel for the petitioners submits that the plaintiffs themselves stated in the plaint that certain piece of land as mentioned in Schedule-III of the plaint were purchased from joint family property in the name of defendant no.3 and therefore this suit is fit to be dismissed under the provision of Benami Transaction Act. It is further submitted that the learned Sub-Judge-VII, Darbhanga has committed jurisdictional error by recording a finding that the lands mentioned in Schedule-III of the plaint are joint family property. This question whether the lands mentioned in Schedule-III of the plaint are joint family property or exclusive property of defendant no.3 is yet to be decided but the finding of the learned Sub-Judge would prejudice the case of the defendants.

Having considered the facts, I find that the learned Sub-Judge-VII, Darbhanga has rightly dismissed the petition of the petitioners for rejecting the plaint under Order 7 Rule 11 of the C.P.C. but at the same time, the finding with regard to the jointness of lands mentioned in Schedule-III of the plaint is uncalled for. Therefore, that part of the finding that the lands mentioned in Schedule-III of the plaint is joint family property shall have no bearing on the final adjudication of the partition suit.



Accordingly, with this aforesaid observation, this Civil
Miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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