

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17847 of 2010

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1. Mahadeo Chaudhary S/O Late Achhambhi Chaudhary R/O Vill.- Gokhula, P.O.- Gokhula, P.S.- Baunsi, Distt.-Banka and also residing at Dam Road, Near Durga Asthan, P.O. and P.S.- Baunsi, Distt.- Banka.
 2. Chandan Kumar Minor S/O Sri Mahadeo Chaudhary, represented through his legal representative, next friend and guardian Mahadeo Chaudhary R/O Vill.- Gokhula, P.O.- Gokhula, P.S.- Baunsi, Distt.-Banka and also residing at Dam Road, Near Durga Asthan, P.O. and P.S.- Baunsi, Distt.- Banka.
 3. Rukmani Devi W/O Mahadeo Chaudhary R/O Vill.- Gokhula, P.O.- Gokhula, P.S.- Baunsi, Distt.-Banka and also residing at Dam Road, Near Durga Asthan, P.O. and P.S.- Baunsi, Distt.- Banka.

.... Petitioners

Versus

1. Bhagwan Chaudhary son of Late Achhambhi Chaudhary, resident of village Gokhula, P.S. Baunshi, District Banka, presently residing at D.N. Singh Road, Kharamanchak, P.S. Kotwali, Town and District Bhagalpur.
2. Maharani Devi wife of Sri Mahesh Prasad Chaudhary and daughter of Late Achhambhi Chaudhary resident of Mohalla Maroofchak, P.S. Mojahidpur Town and District Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dev Kumar Pandey, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-10-2018

Petitioners before this court are defendants 1st party in Title (Partition) Suit No.307 of 2000 pending in the court of Subordinate Judge I, Bhagalpur. They have filed this writ application for quashing the order dated 01.09.2010 whereby and whereunder their prayer to return the plaint to the plaintiff under Order VII Rule 10 of C.P.C. was rejected.

2. Heard learned counsel for the petitioners. Nobody appeared for the respondents.



3. It appears that the respondent no.1 filed the aforesaid suit for partition of property mentioned in Schedule A and B of the plaint. The petitioners appeared and filed written statement. They filed a petition on 02.02.2010 praying therein to return the plaint to the plaintiff on the ground that the court has no territorial jurisdiction to entertain the said partition suit.

4. The learned counsel for the petitioners submitted that the plaintiff is a full brother of petitioner no.1 and the entire suit properties situate in Banka district. There is absolutely not a single movable or immovable property in the jurisdiction of Bhagalpur district. The plaintiff with *mala fide* and dishonest intention has mentioned about a business allegedly running in the district of Bhagalpur with a view to make the jurisdiction of Bhagalpur district. The petitioners had or have no concern with the business as mentioned in Schedule B (ii) of the plaint. The plaintiff at paragraph 7 and 8 of the plaint has specifically stated that the defendant no.1 being *Karta* of joint family ousted the plaintiff from the joint family business and restrained the plaintiff from enjoyment of joint family income and benefit and so seeing no alternative, the plaintiff shifted to Bhagalpur and started a business with one Binod Mandal in a tenanted premises. The plaintiff has not given details of business or its property in the plaint. According to the petitioners, the plaintiff has given a vague information about fake business alleged to be carried out by the



plaintiff with his partner who is a stranger to the family of this petitioner and so the impugned order refusing to return the plaint to the plaintiff for want of territorial jurisdiction is not sustainable and is fit to be quashed.

5. On perusal of impugned order as well as copy of plaint, I find that the learned court below while rejecting the prayer of petitioners has observed that item no.(ii) of Schedule B of plaint is joint business of plaintiff and defendants which are being run in the name and style of “Hindustan Electric Works” at Bhagalpur. This fact is against the material on record as neither the plaintiff nor the defendants have asserted about the joint family business in their pleadings. The order of court below is against the material on record and so it is not sustainable.

6. In view of above discussions, the impugned order is set aside and the court below is directed to pass order after considering the pleadings of both parties as regards territorial jurisdiction of the court.

7. This writ application is accordingly allowed.

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.10.2018
Transmission Date	

(Sanjay Kumar, J)

