

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16895 of 2010

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1. Ashok Tiwary S/o Mudrika Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village- Rudalpur, P.S.- Bhore, Distt.- Gopalganj
 2. Jai Prakash Tiwary S/o Mudrika Das, resident of village -Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village-Rudalpur, P.S.- Bhore, Distt.- Gopalganj.

.... Petitioner/s

Versus

1. Baliram Tiwary S/o Ramawatar Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj
2. Ram Pyari Devi D/o Ramawatar Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj
3. Rampati Devi D/o Ramawatar Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj
4. Nagina Das S/o Tuntun Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village.- Rudalpur, P.S.- Bhore, Distt.- Gopalganj
5. Mudrika Das S/o Tuntun Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village Rudalpur, P.S.- Bhore, Distt.- Gopalganj
6. Ram Daras Tiwary S/o Mudrika Das, resident of village - Jhirwa, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village Rudalpur, P.S.- Bhore, Distt.- Gopalganj
7. Om Prakash Tiwary (Minor) S/o Mudrika Das under guardianship of plaintiff no.1 and resident of village - Jhirwa,, P.S.- Uchka Gaon, Distt.- Gopalganj, at present residing at village - Rudalpur, P.S.- Bhore, Distt.- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Singh, Adv.
For the Respondent/s : Mr. Naresh Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 22-11-2018

The petitioners were plaintiffs before the court below.

They have filed this writ application for quashing the order dated 09.08.2010 passed by Sub-Judge-III, Gopalganj in Title Suit No. 225 of 2001 whereby and whereunder the suit of the plaintiffs was



dismissed as not maintainable.

2. Heard learned counsels for the petitioners and the respondents.

3. Petitioners filed the aforesaid suit for declaration that the compromise decree passed in Partition Suit No. 96 of 1982 is not binding on the plaintiffs besides some other reliefs.

4. It has been submitted that the father of these petitioners and their uncle had filed Partition Suit No. 96 of 1982 for partition of their property. In the said suit, these petitioners were not impleaded as party to the suit and so the decree passed on the basis of compromise is not binding on them.

5. The learned counsel for the respondents on the other hand submits that the petitioners have filed Title Suit No. 225 of 2001 in collusion with their father who had filed Partition Suit No. 96 of 1982. The father of these petitioners is defendant no. 5. He has not challenged the said compromise decree and so the present Title Suit No. 225/2001 to declare the decree as fraudulent, illegal and void is not sustainable. The learned counsel prayed to dismiss the writ application.

6. On going through the impugned order and documents on record, I find that the father of these petitioners along with his brother had filed the suit for partition. The suit was



compromised and accordingly decree was passed on 23.07.1987. The plaintiffs of Partition Suit No. 96 of 1982 have not challenged the said decree. The learned court below considering the provision of Order 23 Rule 3-A of Code of Civil Procedure, has dismissed the suit as not maintainable. The plea of petitioner that the compromise decree is forged, fabricated, fraudulent and void is not sustainable in view of the fact that they were not party to the compromise petition. The petitioner's claim that they being coparceners were necessary party to the suit could have been raised before the court below in the same suit by filing miscellaneous case itself.

7. In view of above discussions, I do not find any jurisdictional error in the impugned order requiring any interference.

8. This writ application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27/11/2018
Transmission Date	N/A

