

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.941 of 2018

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1. Anjani Kumar Singh, Son of Sri Ganeshanand Singh, Resident of Village and Post Numar, P.S.- Barhat, District- Jamui.

.... Petitioner/s

Versus

1. Ganeshanand Singh, Son of Late Jamuna Singh, Resident of Village and Post Numar, P.S.- Barhat, District- Jamui.
2. Mridula Singh,
3. Bindu Singh,
4. Daizi Singh, All daughters of Sri Ganeshanand Singh, all resident of Village and Post Numar, P.S.- Barhat, District- Jamui.
5. Naresh Singh, Son of Late Karu Singh,
6. Sumit Kumar Singh, Son of Late Kaushal Kishor Singh,
7. Most. Pushplata Singh, Wife of Late Kaushal Kishor Singh,
8. Balmiki Singh,
9. Anil Singh, Both serial no. 8 and 9 sons of Late Ramswaroop Singh,
10. Ranjeet Singh, Son of Late Muneshwar Singh,
11. Sanjay Singh,
12. Dayanidhi Singh,
13. Dayanand Singh,
14. Bharat Singh,
15. Mangal Singh, All serial no.11 to 15 are sons of Late Shyam Singh,
16. Smt. Usha Devi, Wife of Late Shyam Singh,
17. Ram Singh, Son of Late Arjun Singh,
18. Bholi Singh, Son of Late Arjun Singh,
19. Bijay Singh, Son of Late Arjun Singh, All serial no. 11 to 19 are resident of Village and Post- Numar, P.S.- Barhat, District- Jamui.
20. Nawal Singh, Son of Late Suresh Singh,
21. Sudhanshu Singh, Minor son of Late Binod Singh,
22. Smt. Santi Devi, Wife of Late Binod Singh,
23. Smt. Bibha Devi, Wife of Late Upendra Singh,
24. Ritesh Singh, Minor Son of Late Upendra Singh, All serial no. 20 to 24 are residents of Village and Post Numar, P.S.- Barhat, District- Jamui.
25. Sri Dayanand Singh, Son of Late Shyama Pd. Singh, Resident of Village and Post- Numar, P.S.- Barhat, District- Jamui.
26. Basudeo Yadav,
27. Baleshwar Yadav,
28. Baijnath Yadav,
29. Damodar Yadav, All sons of Sri Jago Yadav, Resident of Village and Post Numar, Tola- Bakhari, P.S.- Barhat, District- Jamui.
30. Kartik Yadav, Son of Late Permeshwar Yadav, Resident of Village and Post Numar, Tola- Bakhari, P.S.- Barhat, District- Jamui.
31. Smt. Rajani Singh, Daughter of Sri Bishundeo Singh, Resident of Village- Numar, P.S.- Barhat, District- Jamui.
32. Devan Yadav, Son of Late Kaushalya Devi
- 32.(a) Daro Yadav, Son of Baijnath Yadav
- 32.(b) Suresh Yadav, Son of Mathura Yadav, All resident of Village- Numar (Tola Bakhari), P.S.- Barhat, District- Jamui.
33. Smt. Bhaso Devi, Wife of Sri Jageshwar Thakur, Resident of



Nasarichak, Post Numar, P.S.- Barhat, District- Jamui.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sumeet Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

2 18-07-2018 Heard learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition against the order dated 30.05.2018 passed in Title Suit No.232 of 2016 by which the petition of the petitioner filed under Order 39 Rule 1 and 2 read with Section 151 C.P.C. has been dismissed.

The petitioner is plaintiff in the suit. The plaintiff filed the suit for partition of his 1/5th share in the suit land. The case of the plaintiff that his father, Jamuna Singh exclusively got the land mentioned in Schedule II of the plaint and defendants 3rd set are the sons of brother of Jamuna Singh, therefore, they are entitled to get any share in the land mentioned in Schedule II of the plaint. The defendants 3rd set appeared and claimed by filing written statement that the entire lands belonged to joint Hindu family property and there was partition among Jamuna Singh and brother of Jamuna Singh. The defendants 3rd set got share in the land and accordingly they have been coming in peaceful possession, on such consideration, the learned court below found that the suit is



for partition and the plaintiff has got no prima facie case for grant of injunction and balance of convenience also does not lie in his favour. Accordingly, dismissed the petition by the order impugned.

Mr. Sumeet Kumar Singh, learned counsel appearing on behalf of the petitioner submits that it is definite case of the plaintiff that the land mentioned in Schedule II of the plaint was exclusively acquired by Jamuna Singh, the grandfather of the plaintiff. The defendants 3rd set are the descendants of brother of Late Jamuna Singh. They are not entitled to get any share but on mere assertions of defendants that they got share, the petition for injunction has been dismissed. I find that the defendants claimed the joint family property and partition among the brothers of Jamuna Singh. The defendants 3rd set are also descendants of the brothers of Jamuna Singh. It is plaintiffs who have to prove that the property of Schedule II is the exclusive property acquired by Jamuna Singh and no partition took place with regard to the aforesaid property. Defendants claimed partition of joint family property and possession of Schedule II land. On such facts, unless the plaintiff proved the facts of self acquisition of property by Jamuna Singh, I find that on such facts when both parties claimed partition of joint Hindu property the plaintiff has got no prima facie case for



grant of injunction. The balance of convenience also does not lie in favour of the plaintiff and on the facts, the plaintiff will not suffer from any irreparable loss, if the injunction is not granted.

Thus, I do not find any merit in this civil miscellaneous petition. Accordingly, this civil miscellaneous is dismissed.

(Prabhat Kumar Jha, J)

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