

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17977 of 2014

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Maheshwar Choudhary Son of Late Kulo Choudhary, resident of village Singhia Makandpur, P.S. Gopalpur, District Bhagalpur.

.... Petitioner

Versus

1. Most. Sanjukta Devi Wife of Late Shiv Narayan Singh
2. Indu Devi, Daughter of Late Shiv Narayan Singh
3. Durga Singh
4. Binay Singh
5. Uday Singh
6. Mukesh Singh
- All sons of Late Shiv Narayan Singh,
- All residents of Village Tilakpur, P.O. Tilakpur, P.S.- Sultanganj, District- Bhagalpur
7. Most. Sunaina Devi, Wife of Late Jogendra Singh @ Jogi Sangahi,
8. Anil Sangahi
9. Sanjay Sangahi
- Both Sons of Late Jogendra @ Jogi Sangahi
10. Shanti Devi
11. Nilam Devi Both Daughter of Late Jogendra @ Jogi Sangahi
- All Resident of Village Amarpur, P.S.- Bihpur, District Bhagalpur
12. Parwati Devi Wife of Late Sachidanand Sangahi
13. Sanjeev Kumar Sharma
14. Gopal Sharma
15. Murari Sharma,
- All Sons of Late Sachidanand Sangahi
16. Naulakhi Devi, Daughter of Late Sachidanand Sangahi
- All Resident of Village Amarpur, P.S.- Bihpur, District Bhagalpur
17. Jai Prakash Sangahi, Son of Late Ambika Sangahi
18. Bibha Devi Wife of Late Laxmi Sangahi and Daughter of Late Ambika Sangahi
19. Shahil Kumar, Son of Late Lakshmi Sangahi
20. Cham Cham Kumari, Daughter of Late Laxmi Sangahi
21. Shankar Sangahi, Son of Late Ambika Sangahi
22. Gyatri Devi Daughter of Late Ambika Sangahi
23. Nandini Devi Daughter of Late Ambika Sangahi
- All Residents of Village Amarpur, P.S.- Bihpur, District Bhagalpur
24. Uday Choudhary son of Late Ram Tirath Choudhary
25. Parma Nand Choudhary Son of Late Ram Tirath Choudhary, Both Residents of Village Singhia Makandpur, P.S. Gopalpur, District Bhagalpur
26. Bindu Devi Daughter of Late Ram Tirath Choudhary and Wife of Sada Nand Singh Resident of Village Tilakpur, P.S.- Sultanganj, District- Bhagalpur
27. Bipin Kumar Choudhary
28. Binay Kumar Choudhary
- Both Sons of Late Sri Narayan Choudhary
29. Most. Kiran Devi, Wife of Late Abhay Kumar Choudhary
30. Nitish Choudhary, Son of Late Abhay Kumar Choudhary
31. Somiya Kumari, Minor Daughter of Late Abhay Kumar Choudhary, through her mother Most. Kiran Devi



All Residents of Village Singhia Makandpur, P.S.- Gopalpur, District Bhagalpur
32. Bibhas Prasad Singh, Son of Late Jwala Prasad Singh, resident of Village Latti Pakar, P.S. Gopalpur, District Bhagalpur
33. Uma Shankar Choudhary, Son of Late Kulo Choudhary, resident of village Singhia Makandpur, P.S. Gopalpur, District Bhagalpur, presently residing at Bagna Bari, Colony No. 1, by the Side of Canal, District Katihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 16-08-2018

Petitioner before this court is plaintiff of Title Suit No.30 of 2002. He has filed this writ application for quashing the order dated 11.08.2014 passed by Munsif, Naugachia whereby and whereunder the respondent no.33 was impleaded as defendant subject to payment of cost of Rs.1500/-.

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

3. The petitioner has filed the aforesaid suit for declaration of his title over the land measuring 0.11 decimals of Plot No.17 corresponding to C.S. Plot No.3 as mentioned at the foot of the plaint. The respondent no.33 Uma Shankar Choudhary who is full brother of the plaintiff filed a petition under Order 1 Rule 10 of C.P.C. for impleading him as party to the suit. The court below after hearing both sides allowed the said petition and he was impleaded as defendant to the suit.



4. The learned counsel for the petitioner submits that the intervener defendant is not necessary party to the suit for adjudication of point in dispute. The land in dispute has been wrongly recorded in the name of Late Giro Choudhary but in remark column the name of petitioner has been mentioned. The land in dispute was orally given to the petitioner in family settlement in the year 1951-52. Out of southern $\frac{1}{2}$ portion of C.S. Plot No.3, major portion of said plot was taken by Dilo Choudhary. The land in present dispute was allotted to the petitioner and he is coming in exclusive possession over the same.

5. The learned counsel for the respondents, on the other hand, submits that at the time of alleged oral partition, the respondent was aged about 2 years which stands established from the age given by respondent at the time of giving evidence in case No.M.S.40 of 1975 (Annexure 3 to the writ application). The respondent being full brother of plaintiff has interest in the suit property. The plaintiff wants declaration of his exclusive title which is not legally sustainable. The court below considering the interest of petitioner has rightly impleaded him as party to the suit.

6. On going through the documents on records, I find that the plot in dispute is ancestral land of the family of the plaintiff. The intervener defendant is his full brother and on the date of alleged oral family settlement he was minor. The claim of the petitioner as regards



oral family arrangement has been denied by the respondent and so he being proper party has rightly been impleaded as defendant.

7. In view of facts and circumstances of the case, I find that the court below has not committed any jurisdictional error in impleading him as defendant. This writ application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.08.2018
Transmission Date	

