

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15686 of 2014

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1. Surendra Singh S/o Devendra Singh
2. Rajesh Kumar
3. Sanjay Kumar, Both sons of Surendra Singh,
All R/o village-Chakbihari, P.O.-Nandlalabad, P.S-Gourichak, District-Patna.

.... Petitioner/s

Versus

1. Suresh Singh S/o Ambika Singh
2. Ajit @ Nikka Singh S/o Suresh Singh
3. Ravi Singh S/o Suresh Singh
4. Birendra @ Brind Singh S/o Devendra Singh
5. Anil Singh
6. Abhay Kumar, Both sons of Birendra @ Brind Singh
7. Laxminiya Devi @ Baijyanti Devi W/o Rameshwar Paswan
8. Parmanand Paswan S/o Charitar Paswan, Both resident of village - Barwa,
Nandlalabad, P.S. - Gourichak, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad, Sr. Adv.
Mr. Abhinay Raj, Adv.
For the Respondent/s : Dr Anshuman, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2018

Petitioners before this Court are plaintiffs in Title Partition Suit No. 99 of 2012 pending in the court of Sub-Judge-V, Patna City. They have filed this writ application for quashing the order dated 09.07.2014 whereby and whereunder prayer of the petitioners under Order VIII Rule 6-C read with section 151 of Code of Civil Procedure to exclude the counter-claim of the defendants was rejected.



2. Heard learned counsels for the petitioners as well as the respondents and perused the record.

3. The petitioners filed the aforesaid partition suit for partition of their ancestral property described in schedule-I of the plaint which situates within the district of Patna. The defendants appeared and filed their written statement and in addition to partition of said property, they set up by way of counter-claim for partition of land with respect to property of one Doma Singh situating in village Makhdumpur Nikouli under Nalanda district. The petitioners filed a petition on 30.07.2013 under Order VIII Rule 6-C of Code of Civil Procedure stating therein that the counter-claim made by defendants cannot be decided as the same is beyond the scope of provision of Order VIII Rule 6-A of Code of Civil Procedure. The said land is sasurali property of one of the brother of the parties. The petitioners have accordingly prayed to exclude the said property from the counter claim. The defendants filed rejoinder and after hearing both sides, the court below rejected the prayer of the petitioners.

4. It appears that the plaintiffs filed the aforesaid suit with respect to land which was inherited by both the parties from their ancestor. The property, which the defendants want to partition, originally belonged to one Doma Singh, who died leaving behind two daughters. The defendants claim that two sons of Chenan Singh



namely Ambika Singh (original defendant) and Devendra Singh were married to the daughters of Doma Singh. After the death of both daughters, the family of both the parties came in joint possession over the property left by Doma Singh. The said Doma Singh was not the ancestor of any of the parties to the Partition Suit No. 99 of 2012. They have denied the claim of the defendants as regards inheritance in the property of said Doma Singh. The land which has been sought to be partitioned under counter-claim of defendants, admittedly is not their ancestral property rather it belonged to the daughters of Doma Singh. The petitioners have further denied that the defendant-Devendra Singh was married with the daughter of Doma Singh rather one of the daughter of Doma Singh was married with different person. According to provision of Order VIII Rule 6-A CPC, the defendants have right to put counter-claim only against the claim of plaintiffs. The plaintiffs have not claimed the property which is being claimed by the defendants in their written statement by way of counter-claim. The said property situates within the jurisdiction of Nalanda district and so the same being not an ancestral property of these petitioners, cannot be subjected to be partition particularly when the plaintiffs have not sought partition of the said property. The defendants' claim can't be disposed of by way of counter-claim

5. In view of the above discussions, I find that the court



below has committed error in refusing to exclude the said land which has been sought for partition by way of counter-claim. As such impugned order is not sustainable and is accordingly set aside and this writ application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.09.2018
Transmission Date	N/A

