

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16942 of 2014

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1. Suresh Chandra Bijpuria
 2. Satish Kumar Bijpuria
 3. Vijay Kumar Bijpuria
 4. Ajay Kumar Bijpuria
 5. Sushil Kumar Bijpuria
 6. Sunil Kumar Bijpuria
 7. Sudhir Kumar Bijpuria All are sons of Late Sona Lal Bijpuria
 8. Srimati Vinod Devi Gupta null All are resident of Mohalla- Kali Asthan, Patna City, Police Station- Chowk (Patna City), District- Patna

.... Petitioner/s

Versus

1. Ashok Kumar Bijpuria, Son of Late Hari Narayan Lal Bijpuria, Resident of Mohalla- Kidwaipuri, I.A.S. Colony, Police Station- Budha Colony, District- Patna
2. Murari Lal Bijpuria, Son of Late Hari Narayan Lal Bijpuria, Resident of 3906, Throughbred Lane, Owings Mills Baltimore, M.D.- 2117, U.S.A.
3. Badri Prasad Bijpuria
4. Subhash Chandra Bijpuria Both are sons of Late Gauri Shankar Lal Bijpuria
5. Prabha Devi,, wife of Late Radhey Krishna Bijupuria All are Resident of Mohalla- Dariba Baz Bahadur Ki Gali, Patna City, P.S.- Chowk, District- Patna
6. Rameshwar Prasad Bijpuria, Son of Late Gauri Shankar Lal Bijpuria, Resident of Flat No. 54, Jagat Apartment, Kankarbagh, P.S. Kankarbagh, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Triloki Nath Maitin, Sr. Advocate Mr. Rajeev Kumar Sinha, Advocate
For the Respondent/s	:	Mr. L. N. Das, Advocate Mr. P.C. Agarwal Advocate Mr. Ajay Kumar Advocate, (Res nos.3 to 6)

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 25-06-2018

The petitioners before this Court are plaintiffs of Title Partition Suit No.232 of 1992 pending in the Court of Sub Judge-IV, Patna City. They have filed this application for quashing the order dated 12.08.2014 passed by learned court below whereby and whereunder the petition filed by defendant nos.2 and 3 on 17.01.2014



to permit them to deposit an amount of Rs.31,000/- each in favour of three parties along with interest was allowed.

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

3. The petitioners before this Court had filed Title (Partition) Suit No.232 of 1992 for partition of suit property mentioned in schedule-4 of the plaint claiming 1/4th share. The property mentioned in schedule-4 of the plaint contains 14 items. Out of which, item no.1 is partnership business of the parties. The plaintiffs have relied on a memorandum of partition which has been marked as Ext-1 by the court below. The said Ext-1 has been annexed as Annexure-2 of this writ application. In the said document, the common ancestor of the parties while making arrangement of partnership business had given preferential right to acquire the firm business on making payment of Rs.31,000/- each to remaining three sharer/partners. It has been stated that on failure in making payment of Rs.31,000/- by the first partner the other parties would get preferential right turn by turn to deposit/pay the said amount to other partners. After settlement of the issues, the trial commenced. During the pendency of trial, the defendant nos.2 and 3 filed a petition on 16.03.1993 praying therein to permit them to deposit Rs.31,000/- each in favour of three partners/sharers as stipulated in Ext-1 along with interest at the rate of 12% on account of delay in tendering the money.



The petitioners/plaintiffs filed rejoinder and after hearing both sides, the court below permitted the defendants to deposit the said amount.

4. The learned counsel for the petitioners submits that by permitting the defendants to deposit the said amount has virtually decided the dispute which is beyond the jurisdiction of learned court below. The suit for partition was filed in the year 1992 and after 22 years of filing of suit, the contesting defendants filed a petition seeking permission to deposit the said amount. The suit for partition has to be decided on merit. The court below has no jurisdiction to give such direction at the fag end of trial without deciding the issue. The suit is at the stage of argument. The court below has already framed issue as to whether the plaintiffs are entitled to decree for partition. The parties concerned will get share in the suit property only after decision of the court below.

5. The learned counsel for the contesting respondents on the other hand submits that the Ext-1 is admitted document and has been marked at the instance of plaintiffs. This document does not disclose the period of limitation for making payment of Rs.31,000/- to the other sharers. The other sharers did not opt to deposit the said amount and so there is no illegality in the impugned order whereunder the petitioners have been permitted to deposit the amount. The court has not committed any jurisdictional error requiring any interference under inherent jurisdiction and so this writ application is fit to be



dismissed.

6. On going through the material on record, I find that the plaintiffs have claimed 1/4th share in the suit property which contains 14 items. Out of 14 items, the court below has ordered for payment of Rs.31,000/- in favour of other three co-sharers as per memorandum of partition with respect to one item. The document Ext-1 appears to be an unregistered document. The signature of other co-sharers on the said document is disputed by the petitioners and other two co-sharers. It further appears that the money has been deposited as per direction of the court below after 22 years of filing of partition suit. This deposit does not give any preferential right to the defendants to get the partnership business as the matter in dispute is subjudice. In view of above fact the said order do not prejudice the petitioners. The deposit of money by the defendants and their entitlement would be subject to the decision of the court below on the point of its partition.

7. In view of above facts and observation, I do not find any reason to interference with the impugned order. This application is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02.07.2018
Transmission Date	N/A

