

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.18526 of 2013

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Sahdeo Rai Son Of Late Siya Ram Rai Resident Of Village Bhikha Chak Police Station Gardanibagh Town And District - Patna

.... .... Petitioner/s

Versus

1. Lall Babu Rai Son Of Late Mathura Rai Resident Of Village Bhikha Chak Police Station Gardanibagh Town And District - Patna
2. Santosh Kumar Son Of Sri Lall Babu Rai Resident Of Village Bhikha Chak Police Station Gardanibagh Town And District - Patna
3. Mantosh Kumar Son Of Sri Lall Babu Rai Resident Of Village Bhikha Chak Police Station Gardanibagh Town And District - Patna
4. Mukesh Kumar Son Of Sri Lall Babu Rai Resident Of Village Bhikha Chak Police Station Gardanibagh Town And District - Patna
5. Ram Chandra Rai Son Of Late Bhagwat Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
6. Dwarika Rai Son Of Late Mathura Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
7. Deoki Rai Son Of Sri Mathura Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
8. Binod Rai Son Of Sri Dwarika Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
9. Shayam @ Shiv Kumar Son Of Sri Dwarika Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
10. Surendra Kumar Son Of Sri Dwarika Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
11. Ashok Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
12. Rajesh Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
13. Sunil Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
14. Dashrath Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
15. Chotu Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
16. Kishore Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
17. Yogendra Kumar Son Of Sri Deoki Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
18. Ramesh Rai Son Of Late Sita Ram Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
19. Niraj Son Of Sri Ramesh Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
20. Randhir Kumar Son Of Sri Ramesh Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
21. Vidyanand Rai Son Of Sri Ram Chandra Rai Resident Of Village Bhikha Chak P.O. Anishabad Police Station Gardanibagh, Town And District Patna
22. Chotki @ Moshmat Sita Devi Wife Of Late Ganpat Rai @ Phuli Rai Resident



Of Village Zamaluddin Chak Police Station Khagaul District Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. KAUSHAL KISHORE, Advocate  
For the Respondent No.1 : Mr. Arvind Kumar Srivastava, Advocate  
For the other Respondents : Mr. Pramod Kuamr Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 27-09-2018**

This application has been filed for quashing the order dated 20.07.2013 passed by learned Sub Judge-III, Patna in Miscellaneous Case No.13 of 2011 whereby and whereunder the learned Sub Judge refused to amalgamate the Miscellaneous Case No.13 of 2011 and Miscellaneous Case No.14 of 2011 for hearing and disposal.

2. Heard learned counsel for the petitioner as well as the respondents.

3. It appears that this petitioner and his father filed Title (Partition) Suit No.401 of 1986 against the respondents which was decreed ex-parte as per judgment dated 25.05.1992. Thereafter, the petitioner filed Execution Case No.01 of 2007 in which the Opposite Party did not appear in spite of publication of notice in daily newspaper. The court below appointed survey knowing pleader commissioner and in the light of report of commissioner, the delivery of possession was accordingly effected. The respondent nos.1 to 4 filed Miscellaneous Case No.13 of 2011 under Section 47 of the Code



of Civil Procedure asserting their exclusive right title and interest over the plot no.966. They have challenged the decree as not executable on the ground that the petitioners have their own residential house over plot no.966 and the decree in question does not contain the house standing over plot no.966. Another co-sharer respondent no.17 Yogendra Kumar filed Miscellaneous Case No.14 of 2011 under Order 21 Rule 99 of Code of Civil Procedure. Both the Miscellaneous cases are pending before the same court. This petitioner being Opposite Party filed a petition for hearing of Miscellaneous Case No.13 of 2011 along with Miscellaneous Case No.14 of 2011 on the ground that applicants of both the cases were defendants in Partition Suit No.401 of 1986. Applicant Lal Babu Rai, Miscellaneous Case No.13 of 2011 and Deoki Rai (father of Yogendra Rai) are full brothers and their father Mathura Rai had filed Partition Suit No.404 of 1986 against the petitioner. The subject matter of both the suits as well as parties were common and so the subsequent Partition Suit No.404 of 1986 was withdrawn by Mathura Rai. The learned counsel for the petitioners submitted that the petitioner of Miscellaneous Case Nos.13 of 2011 and 14 of 2011 are related as uncle and nephew and they are descendants of said Mathura Rai. They all were parties to the said Partition Suit No.401 of 1986. They did not appear to contest the suit and so the suit was decreed ex-parte against



them. The said judgment and decree is final as none of them filed any appeal or any miscellaneous case under Order IX Rule 13 of CPC to set aside the judgment and decree. One of the co-sharer, namely, Sita Ram Rai had filed Miscellaneous Case No.02 of 1993 and Miscellaneous Case No.13(A) of 1995 for setting aside the said decree, which were dismissed on 20.04.1995 and 10.11.2004 respectively.

4. On going through the copy of plaint of Partition Suit No.401 of 1986, I find that the plot no.966 area 7 decimal which is being claimed by the applicant of Miscellaneous Case No.13 of 2011 was also the subject matter of partition along with other plots. The applicants of Miscellaneous Case No.13 of 2011 were defendant nos.4 to 6 and Yogendra Rai applicant of Miscellaneous Case No.14 of 2011 was defendant no.16. Although his full name was not described in the plaint of Partition Suit No.401 of 1986 but his name finds place in para no.1 of the plaint. The said Yogendra Rai and his three brothers were minor and they were sued through their father and natural guardian Deoki Rai (defendant no.5). Thus, I find that applicants of both the cases being co-sharer were party to the said Partition Suit No.401 of 1986 as defendants and subject matter in dispute is also the same. On going through the averment made in the miscellaneous application, copy of plaint and judgment on record, I



find that the issues involved in both the cases are similar and the matter in dispute is also common among the parties and so the court below ought to have consolidated both the cases for hearing in order to avoid multiplicity of the proceedings and to save the precious time of the court.

5. In view of above discussions, the impugned order refusing to hear both the cases together is set aside and this writ application is allowed. The court below is directed to consolidate both the cases and decide the same expeditiously.

**(Sanjay Kumar, J)**

B.Kr./-

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