

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1430 of 2016

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1. Ramnath Sahani, Son of Bhorik Sahani,
2. Tingan Sahani, Son of Mangal Sahani,
3. Birendra Sahani, Son of Hari Sahani, All are resident of village -
Koilahara, P.S. Madhuban, Distt. - East Champaran
4. Sobha Devi, Wife of Sikandar Sahani, Daughter of Late Koish Sahani,
Resident of village - Tarapakar, P.O. & P.S. Maheshi, District - East
Champaran

.... Petitioner/s

Versus

1. Panchu Sahani,
2. Budhu Sahani, Both are sons of Late Asharfi Sahani, both are Resident of
village - Koilahara, P.O. & P.S. Madhuban, District - East Champaran
3. Daroga Sahani,
4. Amichand Sahani, Both are sons of Late Vishundayal Sahani, both are
Resident of village - Koilahara, P.O. & P.S. Madhuban, District - East
Champaran
5. Most. Etawariya, Wife of Late Raja Sahani, daughter of Late
Vishundayal Sahani, Resident of village - Bariyapur, P.S. Motipur,
Muzaffarpur
6. Kalawatiya, Wife of Dhaneshwar Sahani, daughter of Late Vishundayal
Sahani, Resident of village - Koilhara, P.O. & P.S. Madhuban, District -
East Champaran
7. Ramkali Devi, Wife of Adalat Sahani, daughter of Late Vishundayal
Sahani, Resident of village - Edilpur Harauna, P.O. Mosandi, P.S. Motipur,
District - Muzaffarpur
8. Kripa Sahani,
9. Chandrika Sahani, Both are sons of Dhyan Sahani
10. Dhyan Sahani, son of Late Jaldhari Sahani Three are Resident of village
- Koilhara, P.O. & P.S. Madhuban, District - East Champaran
11. Baidyanath Sahani,
12. Vindheshwari Sahani,
13. Janak Sahani,
14. Jangali Sahani, Four are sons of Late Sanphool Sahani, Four are
Resident of village - Koilhara, P.O. & P.S. Madhuban, Distt. East
Champaran
15. Shobha Devi wife of Sikandar Sahani, daughter of Late Koish Sahani,
Resident of village Tadapakar, P.O. & P.S. Maheshi, District East
Champaran
16. Kodai Sahani,
17. Jogi Sahani, Both are sons of Late Raushan Sahani, both are Resident
of village - Koilhara, P.O. & P.S. Madhuban, District - East Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Ranjan

For the Respondent/s : Mr. Dhurendra Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER



4 26-10-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 19.08.2016 passed by Sub Judge IX, Motihari by which the Sub Judge has refused to recall the order dated 29.07.2016 passed in Title Suit No.712 of 2013 directing the defendant Nos.13 to 16 to firstly adduce the evidence because they stated in the written statement that there was partition.

Petitioners are the defendant Nos.13 to 16 in the suit. Learned counsel for the petitioners submits that the petitioners stated that the defendants filed written statement stating therein that the partition suit is not maintainable and there was partition. They also contested the suit on the ground that the plaintiffs do not belong to the family of the defendants and in view of Section 101 of the Evidence Act, it is for the plaintiffs to prove their case but the learned Sub Judge has illegally and erroneously directed the defendant Nos.13 to 16-petitioners to firstly adduce the evidence on the point of partition.

Learned counsel for the plaintiffs-respondents made efforts to justify the order but I find that the defendants-petitioners have very categorically stated that they are not at all related with the family of the plaintiffs and contested the partition suit that their lands are not liable to be partitioned. In this view of the fact



and in view of the provisions as contained in Section 101 of the Evidence Act, it is the plaintiffs who have to prove their case and the plaintiffs should be directed to examine the evidence first.

Taking into consideration the facts aforesaid, I find that the learned Sub Judge has committed jurisdictional error in passing the impugned order. Accordingly, the order dated 19.08.2016 passed in Title Suit No.712 of 2013 is set aside. This civil miscellaneous petition is allowed with a direction to the plaintiffs to adduce evidence first in accordance with law.

(Prabhat Kumar Jha, J)

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