

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20288 of 2013

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1. Shushil Prasad Singh son of Late Devendra Narayan Singh, resident of Jhanjharpur, Ward No. 10, Purani Bazar, Police Station - Jhanjharpur, District – Madhubani.
 2. Prabhas Prasad Singh @ Prabhash Kumar Singh son of Late Devendra Narayan Singh, resident of Jhanjharpur, Ward No. 10, Purani Bazar, Police Station - Jhanjharpur, District – Madhubani.
 3. Rama Devi widow of Late Devendra Narayan Singh, resident of Jhanjharpur, Ward No. 10, Purani Bazar, Police Station - Jhanjharpur, District – Madhubani.

.... Petitioners

Versus

1. Shambhoo Prasad Singh son of Late Devendra Narayan Singh, resident of Village - Jhanjharpur, Police Station - Jhanjharpur, District – Madhubani.
2. Kailash Prasad Singh son of Late Devendra Narayan Singh, resident of Village - Jhanjharpur, Police Station - Jhanjharpur, District – Madhubani.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Suman Kumar Mishra, Advocate

For the Respondent/s : Mr. Pankaj Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-08-2018

Petitioners before this court are defendants of Partition Suit No.16 of 2008 pending in the court of Subordinate Judge-I, Jhanjharpur, Madhubani. This writ application has been filed for quashing the order dated 29.08.2013 whereby and whereunder the amendment petition filed by the plaintiff was allowed.

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

3. It has been submitted that the aforesaid suit was filed for partition of Chimni Bhatta (brick kiln) claiming 1/5th share in the said



brick kiln business standing over the land mentioned at the foot of the plaint. During pendency of the suit, the plaintiff filed amendment petition to bring new facts and a large number of plots for their partition. On account of said amendment, the nature of the suit has changed and so the same is fit to be quashed. It has been submitted that prior to this suit, a Partition Suit No.50 of 2002 was filed by the petitioner no.2 Prabhash Prasad Singh against the family members. The said suit ended in compromise before the Lok-Adalat and entire properties belonging to the joint family were partitioned. The plaintiff has added all those plots which were already partitioned by the parties before Lok-Adalat in Partition Suit No.50 of 2002 and so the said order allowing amendment is legally not sustainable.

4. The learned counsel for the respondents, on the other hand, submitted that the earlier suit was filed for partition of family property impleading the father, mother and brother. The father of both parties died and his interest devolved upon the respondents and plaintiff. The properties left by their father have to be partitioned. The suit is at initial stage of hearing and only few witnesses have been examined. The said amendment relates to addition of few more plots and so the nature of suit does not change.

5. On going through the documents on record and the impugned order, I find that both parties are co-sharers. The contention



of learned counsel for the petitioners that the properties which stood partitioned have been added as per the impugned order. The petitioners will have an opportunity to get this point raised. The amendment appears simple and it does not change the nature of the suit. The properties in dispute, which are claimed to be joint family properties, have been inherited by the parties and only those plots have been added.

6. In view of above discussions, I do not find any merit in this writ application and is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.08.2018
Transmission Date	

