

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.567 of 2018

Ram Ganesh Mahato S/o Late Ram Chandra Mahato, R/o Village Bherihari
Verma Tola Ward No. 15, Samudayik Bhawan Bhaisalotan, P.S.- Valmiki
Nagar, District- West Champaran.

... .. Defendant/Petitioner

Versus

1. Most. Tetra Devi W/o Late Lal Bahadur Mahato.
2. Ashok Kumar,
3. Binod Kumar Both s/o Late Lal Bahdur Mahato.
4. Reshami Devi, D/o Late Lal Bahadur Mahato, all are R/o village- Bherihari
Burma Tola, P.O+P.S. Valmiki Nagar, District- West Champaran.
... ..Plaintiffs/Respondents 1st Set
5. Ram Sanjay Mahato
6. Sanjay Mahato
7. Chandrika Mahato, all are S/o Ram Ganesh Mahato, All are R/o Village
Bherihari Verma Tola Ward No. 15 Samudayik Bhawan Bhaisalotan, P.S.
Valmiki Nagar, District- West Champaran.

... .. Defendants/Respondents 2nd Set

Appearance :

For the Appellant/s : Mr.Chandra Kant
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 20-12-2018 Heard both sides.

The petitioner has filed this civil miscellaneous
petition against the order dated 19.01.2018, passed in Partition
Suit No.13 of 2006 for recasting of issue has been dismissed.

The petitioner is the defendant. It is admitted fact that
plaintiff filed the suit for partition of the property settled in
favour of Ram Chandra Mahto. Ram Chandra Mahto had three
sons, namely, Lal Bahadur, Ram Ganesh and Ram Naresh. Ram
Naresh died bachelor. Ram Chandra Mahto migrated from
Verma to India and settled in West Champaran. Plot No.49/34 of



Khata No.68, Area 50 decimals situated in Village Persauni Tola Bherihari was settled in favour of Ram Chandra Mahto. Plaintiff is the son of Ram Chandra Mahto and defendant no.1-the petitioner is another son of Ram Chandra Mahto. Other defendants are descendants of the petitioner-defendant Ram Ganesh Mahto. Both the parties adduced their evidence. Ram Ganesh Mahto, the petitioner filed petition for recasting of issues on the ground that plaintiff settled some place in Uttar Pradesh and, therefore, plaintiff is not entitled to get partition in the lands settled in favour of Ram Chandra Mahto. The learned Sub-Judge rejected the petition of the petitioner holding that the issue suggested by the defendant at the fag end of the argument of the suit is not at all necessary to decide the suit of partition with regard to the lands standing in the name of the father of the plaintiff and defendant.

Learned counsel for the petitioner submits that the issues can be recasted at any moment and at any stage before the delivery of the judgment but the learned Sub-Judge has committed jurisdictional error.

I find no force and substance in the submissions of the learned counsel for the petitioner on the facts of the case that the plaintiff filed the suit for partition and allotment of half share in



the lands settled in favour of his father Ram Chandra Mahto. Petitioner is defendant no.1 and brother of the plaintiff. He resisted the partition on the ground that the plaintiff migrated to Uttar Pradesh and some land was also settled in his favour but this fact itself does not disentitle the plaintiff to get partition of the property standing in the name of his father and to get half share.

Accordingly, I do not find any merit in this civil miscellaneous petition and the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

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