

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.765 of 2018

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1. Binod Kumar
 2. Subodh Kumar

Both sons of late Yamuna Mahto @ Late Yamuna Prasad Sinha.

3. Sunil Kumar
4. Ajeet Kumar

Both sons of Sri Rajendra Prasad.

All residents of Mohalla Khandpar, Sheikhpura, Post office and Police Station Sheikhpura, District Sheikhpura.

.... Petitioner/s

Versus

1. Subhadra Devi, wife of Lakhan Mahto, resident of Mohalla Khandpar, Post Office, Police Station and District Sheikhpura.
2. Most. Bimla Devi, wife of late Surendra Prasad.
3. Manoj Kumar, son of late Surendra Prasad.
4. Sangita Devi, wife of Sanjay Kumar.
5. Sweta Kumari, daughter of late Surendra Prasad

All residents of Mohalla Khandpar, Post Office, Police Station and District Sheikhpura.

6. The State of Bihar through the Collector Sheikhpura.
7. The Executive Engineer, Division Lakhisarai, Post Office Lakhisarai, District Lakhisarai.
8. The Sub Divisional Officer, P.W.D., Subdivision Sheikhpura, Post Office, Police Station and District Sheikhpura.
9. The Junior Engineer, PWD, Subdivision, Sheikhpura, Post Office, Police Station and District Sheikhpura.
10. Sri Basudeo Mahton, son of Sibua Mahton, resident of Mohalla Khandpar, Post Office, Police Station and District Sheikhpura.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Garg
For the Respondent/s : Mr. Sajid Salim Khan SC-25

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 27-08-2018 Heard Mr. Kamal Nayan Choubey, learned senior counsel appearing on behalf of the petitioners and Mr. R.C. Sinha, learned counsel appearing on behalf of the Respondent no. 3.

The petitioners filed this Civil Misc. petition against the order dated 18.04.2018 passed by learned Additional District Judge-I, Sheikhpura in Title Appeal No.9 of 2005 by which the



learned Additional District Judge dismissed the petition of the petitioners filed under Order I Rule 10(2) read with Order 41 Rule 20 of the Code of Civil Procedure for impleading the petitioners in Title Appeal.

The sole question arises for consideration in this Civil Misc. petition is that “whether the order dismissing the petition of the petitioners for impleading them as respondents in Title Appeal No.9 of 2005 suffers from any legality”?

The relevant facts which are admitted is that Mahabir Mahto got three sons namely Yamuna Mahto, Rajendra Prasad and Surendra Prasad and two daughters namely, Mostt. Rambati Devi and Budhia Devi. Mahabir Prasad filed Title Suit No.38 of 1982 for declaration of title and confirmation of possession over Plot No.287. During the pendency of the Title Suit No.38 of 1982, Mahabir Prasad died. His three sons namely Yamuna Mahto, Rajendra Prasad and Surendra Prasad separately filed substitution petition but on account of non-pressing of substitution petition filed on behalf of Yamuna Mahto and Rajendra Prasad, their substitution petition was dismissed vide order dated 09.02.2007. Surendra Prasad, the third son of Mahabir Prasad was substituted. The suit was decreed. The descendents of Hira Mahto filed Title Appeal No.9 of 2005, although, the State of Bihar who was also defendant in the suit, did not prefer any appeal. During the pendency of the Title Appeal No.9 of 2005, Yamuma Mahto and Rajendra Prasad, sons of Mahabir Prasad filed petition for their impleadment in Title Appeal No.9 of 2005 but the learned Appellate Court dismissed the petition of their impleadment in Title Appeal along with their brother, Surendra Prasad on the ground that Plot No.287 which is the subject matter



of Title Appeal No.9 of 2005, is the subject matter of Title Suit No. 13 of 1999.

It is pertinent to mention that the Title Suit No.13 of 1999 was filed for partition of the property of Mahabir Prasad @ Mahabir Mahto by his sons and daughters and the entire property of Mahabir Prasad including Plot No.287 was partitioned and each heirs of Mahabir Prasad got 1/5th share in the partition suit and final decree has also been prepared. Execution is also over but the petitioners being the legal heirs of Yamuna Mahto and Rajendra Prasad apprehend and suspect that legal heirs of Surendra Prasad may in collusion with the appellant of Title Appeal No.9 of 2005 may compromise the case. In that event the interest of the petitioners shall not be protected and, therefore, the petitioners filed the petition for their impleadment in the suit but by the impugned order, the same has been dismissed.

Mr. K.N. Choubey, the learned senior counsel appearing on behalf of the petitioners submits that it is no doubt that Plot No. 287, the subject matter of Title Appeal No.9 of 2005 arising out of Title Suit No.38 of 1982 has also been partitioned among the legal heirs of Mahabir Prasad but in the event of any collusive compromise between the legal heirs of late Surendra Prasad, the brother of Yamuma and Rajendra, with the appellant of Title Appeal No.9 of 2005, the interest of the petitioner shall be adversely affected.

Mr. R.C. Sinha, learned counsel appearing on behalf defendant No. 3, who happens to be son of Surendra Prasad submits that there is no question of any collusive compromise between parties of Title Appeal No.9 of 2005.

On the facts, I find that it goes without saying that



the Court has already held that Mahabir Prasad is the owner of Plot No. 287 and against that judgment, the appeal is pending. It is not an exclusive property of Surendra Prasad who is only contesting the case. If any such collusive compromise is arrived at, the petitioners shall have remedy under Order 21 Rule 97 of the Code of Civil Procedure to resist their possession over the land fell in their share by virtue of their inheritance.

Having considered the facts aforesaid, I do not find any merit in this Civil Misc. petition, accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/Rajan

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