

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.427 of 2019

1. Vijay Kumar Mehta
2. Binod Kumar @ Binod Prasad
3. Ashok Kumar Mehta

All sons of Late Ganesh Mahto and all Resident of Devi
Asthan Moglani Bagh, Tekari Road, Pathar Ki Masjid, P.O.- Mahendru, P.S.-
Sultanganj, Distt. Patna.

... .. Defendant-Petitioners

Versus

1. Nilam Devi wife of Sri Sunil Mehta, Resident of Babu Tola Lane,
Maakhania Kuan Road, P.O. - Bankipur, P.S.- Pirbahore, Distt and Town-
Patna.
2. Poonam Devi wife of Sri Om Prakash Singh, Resident of Mohalla Devi
Asthan, Mogalnibagh Tekari Road, Pathar Ki Masjid, P.O.- Mahendru, P.S.-
Sultanganj, Distt. and Town- Patna

... .. Opp.Party 1st Set/Plaintiffs-Resondents

3. Mahesh Mahto son of Late Narayan Mahto (expired on 19.06.2017),
Resident of Tekari Road, Pathar Ki Masjid, P.O.-Mahendru, P.S.- Sultanganj,
Distt and Town - Patna.

... ..Opp.Party 2nd Set/Deft. 2nd Set-Resondent

4. Shivanand Verma son of Late Gayanand Verma, Resident of Block-C
Quarter No.4 Mamda Basti, P.O.- Golmuri, Jamshedpur-831003 (Jharkhand)
5. Mirdula Verma @ Mirula Tripathi wife of Late Jangeshwar Tripathi,
Resident of W.S. Flat No.72, P.O.-Baridih, Jamshedpur-831017 (Jharkhand).
6. Deopati Devi wife of Late Raghubir Mahto, Resident of Chainpura, P.O.-
Begumpur, District-Patna.

... ..Opp. Parties 3rd Set/Deft. 3rd set- Respondents

Appearance :

For the Petitioners	:	Mr.Manoj Kumar Singh, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-07-2019

This application has been filed by the
petitioner for quashing the order dated 01.11.2018 passed by the
learned Sub-Judge-IV, Patna City in Title Partition Suit No.316
of 2015 by which he has rejected the petition dated 30.08.2016
filed under Order 7 Rule 11 of the Code of Civil Procedure (for



short 'CPC') praying therein to reject the plaint of the suit.

2. Learned counsel appearing for the petitioner submitted that the court below without considering the averments made by the parties in real perspective rejected the petition dated 30.08.2016 vide order dated 01.11.2018 and illegally held that the questions raised in the petition by the defendants are mixed question of law and facts which requires trial. He submitted that the court below ought to have allowed the application filed by the petitioners and rejected the plaint in the exercise of powers conferred under Order 7 Rule 11 of the CPC.

3. The plaintiffs have filed Title Partition Suit No.316 of 2015 for partition in the suit property mentioned in Schedule-I, II, III and IV of plaint and thereafter to appoint a survey knowing pleader commissioner to carve out a separate Takhta of the plaintiffs with respect to Schedule-I, II and III property.

4. The petitioners appeared in the suit and submitted that the plaintiffs have instituted the suit without any right in the property. According to him, the plaintiffs and the defendants 1st set are the sons and the daughters of Late Ganesh Mahto, who died in the year 1988. The Hindu Succession Act



came into force on 09.09.2005 and the amended provisions are prospective and not retrospective.

5. The application under Order 7 Rule 11 of the CPC was filed by the defendant for dismissal of the plaint which was rejected by the court below vide impugned order dated 01.11.2018. The learned Sub-Judge-IV, Patna City, Patna, while passing the impugned order, has relied upon the judgment of the Supreme Court passed in Civil Appeal No.188-189 of 2018 (Arising out of SLP(c) Nos.10638-19639 of 2013) decided on 01.02.2018 (Danamma @ Suman Surpur and Ors. vs. Amar and Ors.) wherein it has been held that the amended provisions now statutorily recognizes rights of co-parceners of daughters as well since birth. She has taken note of the fact that the Supreme Court in the said judgment has held that both sons and the daughters of a co-parcener have been conferred right of becoming co-parcener by birth. Having regard to the law laid down by the Supreme Court, the trial court has rightly come to a conclusion that since the issues involved in the suit are mixed question of law and facts and, hence, the same cannot be dismissed in exercise of powers conferred under Order 7 Rule 11 of the CPC. The reasons assigned by the trial court are neither erroneous nor perverse. The order impugned is not even



without jurisdiction.

6. In that view of the matter, I am not inclined to interfere with the order impugned in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

7. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.07.2019
Transmission Date	

