

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 385 of 2019

Bidha Devi @ Mosmat Vidhya Devi (Female), aged about 78 Years, Wife of Late Sito Singh, resident of Village- Achambho, Police Station- Sikandra, District- Jamui.

... .. Appellant/s

Versus

1. Most. Seema Devi (Female), aged about 50 Years Wife of Late Murari Singh, resident of Village- Achambho, Police Station- Sikandra, District- Jamui.
2. Khushbu Singh, (Female), aged about 31 Years Daughter of Late Murari Singh, Wife of Sri Balmukund Singh, resident of Village- Jatipur, P.O.- Jaitpur, Police Station- Barahiya, District- Lakhisarai.
..... Plaintiff/s / Respondent/s 1st Set
3. Indu Devi, (Female) aged about 44 years, daughter of Late Sito Singh, Wife of Sunil Singh, resident of Village- Rasalpur, P.O.- and Police Station- Hathiyama, District- Sheikhpura.

... .. Defendant/s Performa Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Kumar No. 2 and Mr. Gajendra Kumar Singh, Advocates
For the Respondent/s	:	Mr.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 30-05-2019

Heard learned counsel for the petitioner.

2. The present application under Article 227 of the Constitution has been filed for the following relief:

“That the present application is being filed for setting aside the order dated 17.01.2019 passed by the learned court of Sub Judge-4, Jamui in Title Suit No. 123 of 2015, whereby and whereunder the learned court was pleased to dismissed the petition dated 24.08.2018 filed by the defendant/petitioner seeking permission to sale her own purchased land for her treatment as well as to repay the amount of the creditor which has been taken for purpose of her treatment and /or for



any other relief or reliefs to which the petitioner may be found entitled to incurse of hearing of this writ application.”

3. The petitioner is an old widow lady and the respondents being the daughter-in-law and grand daughter of the petitioner have filed Title Partition Suit No. 123 of 2015. According to the petitioner, her self acquired property has also been included and made part of the schedule to the said partition suit. It was contended that the petitioner being old and requiring money for her needs filed an application before the Court below seeking permission for sale her own acquired land, which has been wrongly rejected.

4. Learned counsel for the petitioner submitted that the land in question were not to be included in the partition suit as they were not the ancestral property which only is amenable to partition among the coparceners.

5. Having considered the matter, the Court would only observe that unless the Court finds that the property claimed by the petitioner is her personal property, then only the question would arise as to what is required to be done with the said property and then the petitioner can have cause of action to claim for permission to sell the land and removing it from the schedule of properties of whose partition is sought.



6. At this juncture, learned counsel for the petitioner submitted that the writ petition be disposed off with liberty to the petitioner to file a fresh petition before the Court below for taking out the property which is the personal and self acquired property of the petitioner from the subject matter and schedule of the aforesaid partition suit.

7. Having considered the aforesaid, the writ petition stands disposed off with liberty aforesaid.

8. If such a petition is filed by the petitioner before the Court below for exclusion of her self acquired and personal property from the schedule in the partition suit, the Court below shall consider the same on its own merit, in accordance with law, without being prejudiced by the present order. Further, as the petitioner is old and obviously requiring money for her sustenance, the Court below shall ensure that the petition filed by the petitioner is disposed off latest within one month from the date of its filing.

(Ahsanuddin Amanullah, J.)

P. Kumar

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