

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.625 of 2011

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FULKERA LINOPAU @ FULKERA JAMES, DAUGHTER OF LATE LINOPUL DAS @ BABU LAL DAS, WIFE OF JAMES LAJRAT, RESIDENT OF MOHALLA-CHRISTEN QUARTER WARD NO.6, POST OFFICE/POLICE STATION-BETTIAH TOWN, DISTRICT-WEST CHAMPARAN AND ORS.

... .. Appellant/s

Versus

RAFEL LINOPAU, S/O LATE LINOPAU DAS @ BABU LAL DAS and ORS.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Shiv Kumar Dwivedy, Advocate
For the Respondent/s : Mr.Ganpati Trivedi, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 05-11-2019

I.A. No.8373/18:

Heard.

This interlocutory application has been filed for expunging the name of deceased respondent no.10, Sunil Kumar, who is stated to have died on 10.07.2013 during pendency of this appeal and for substitution of his heirs and legal representatives as described in paragraph no.3 of this interlocutory application.

In view of above, let the name of deceased respondent no.10, Sunil Kumar be expunged from memo of appeal and names of his heirs and legal representatives, as detailed in paragraph no.3, be substituted in his place.

I.A. No.8373 of 2018 stands allowed.



I.A. No.8374/18 :

Heard.

This interlocutory application has been filed for adding the name of one Smt. Anita Srivastav, wife of Byas Prasad Srivastav as respondent in the memo of appeal in the column of respondent 3rd set and also for deleting the name of respondent nos.9, 13 to 24, 26, 27, 30 to 33 and 35 from the column of respondents third set as mentioned in memo of appeal.

It has been submitted that Smt. Anita Srivastav filed a petition before the court below in partition (Title) Suit No.266/2010 and the petition was allowed by the court below by order dated 24.01.2012 during pendency of this appeal. She has also filed her written statement before the court below and contested the suit. It has further been submitted that at the time of filing of present memo of appeal, she was not a party to the suit, thus, she could not be made party in the present memo of appeal.

So far as respondent nos.4, 9, 13 to 24, 26, 27, 30 to 33 and 35 are concerned, it has been submitted that they are purchasers from respondents second set as such they have been made party in the suit as well as in this memo of appeal. It has further been submitted that the aforesaid respondents have not



appeared in the suit as the case was fixed for ex-parte hearing against them and they have no interest left in the suit. The appellants are not in a position to serve again notices to the aforesaid respondents as such, their name be deleted from the column of respondents third party.

In view of above, let the name of Smt. Anita Srivastav, wife of Byas Prasad Srivastav be added as a party respondent in memo of appeal and also name of respondent nos. 4, 9, 13 to 24, 26, 27, 30 to 33 and 35 be deleted from the memo of appeal at the risk of appellant.

I.A. No.8374 of 2018 stands allowed.

M.A. No.625 of 2011:

Heard parties.

This appeal has been filed on behalf of the plaintiffs-appellants against the order dated 06.06.2011 passed by Sub-Judge -III, Bettiah, West Champaran in partition suit No.266 of 2010 by which a petition under Order 39 Rules 1 and 2 of CPC was rejected by the trial court.

The trial court has found that there was oral partition between the parties in the year 1953 and pursuant to said partition, parties came in possession of their respective allotted share and are dealing with their share independently



since 1953 and till 2010 several sale deeds have been executed in favour of purchasers who have purchased the property and are in possession of their purchased land. The trial court has found that there is no unity of title and possession among the co-sharers as such no case for grant of injunction in a partition suit is made out when the severance of status can be inferred from the conduct of the parties and it is not denied by counsel for the plaintiffs-appellants that there had been family arrangement but it has been submitted that there has been no partition by metes and bounds as such suit for partition has been filed. The trial court has found that on the basis of materials available on record, no prima facie case is made out by the plaintiffs-appellants for grant of injunction, nor balance of convenience is in his favour, nor he will suffer any irreparable loss.

This Court is not inclined to interfere in the order passed by the court below. However, the trial court is directed to expedite and conclude the trial within one year from the date of receipt/production of a copy of order passed by this Court without granting unnecessary adjournments to the parties. If the trial is not concluded within the aforesaid period, the trial court is obliged to submit a report to this Court stating the reasons for



which trial could not conclude within the said period.

Miscellaneous appeal stands disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.12.2019
Transmission Date	NA

