

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.806 of 2016

- 1.1. Smt. Gulab Devi, Wife of late Anant Thakur, Resident of Village- Samaul P.S. Madhubani, District- Madhubani, Bihar.
- 1.2. Munni Devi @ Bhibha Devi, Widow of late Uday Chandra Thakur, Resident of Village- Samaul, P.S. Madhubani, District- Madhubani, Bihar.
- 1.3. Rakhi Kumari@ Rekha Devi, Daughter of late Uday Chandra Thakur, W/o Sri Saroj Thakur, Resident of Village and P.O.- Jalgar Gaon, Block- Bahadurpur, P.S. Laheria Sarai, District- Darbhanga, Bihar.
- 1.4. Barsha Kumari @ Barsha Devi, D/o late Uday Chandra Thakur, W/o Sri Ravi Jha, Resident of Mohalla- Mirzapur, Station Road Darbhanga P.O. Lal Bagh, P.S. Town Thana, Block- Dharmapur, District- Darbhanga, Bihar.
- 1.5. Soni Devi@ Babi, D/o of late Uday Chandra Thakur, W/o Binay Kumar Thakur, Resident of Village- Shubhankarpur, Vidya Colony, Ward No. 8, P.S. Town Thana, District- Darbhanga, Bihar.
- 1.6. Smt. Chotti Devi@ Rabina Devi, D/o of late Uday Chandra Thakur, W/o Sri Vijay Kumar Jha, Resident of Village- Basaitha Ranipur, P.O. Ranipur, P.S. Benipatti, District- Madhubani, Bihar.
- 1.7. Smt. Ranju Devi, W/o late Raj Kumar Jha, Resident of Village- Anhri Patti, P.O. Shivi Patti, P.S. Rajnagar, District- Madhubani, Bihar.
- 1.8. Smt. Anila Devi@ Anila Jha, D/o of late Anand Thakur, W/o Sri Shashi Kant Jha, Resident of Village- Bansara, P.O. Pacharhi, P.S. Keoti Ranway, District- Darbhanga, Bihar.
- 1.9. Smt. Devta Devi, D/o of late Anant Thakur, W/o Manoj Kumar Jha, Resident of Village - Balha, P.O. Pariharpur, P.S. Rajnagar, District- Madhubani, Bihar.
- 1.10. Prem Chandra Thakur, Son of late Anand Thakur, Resident of Village- Samaul P.S. Madhubani, District- Madhubani, Bihar.
- 1.11. Dev Chandra Thakur, Son of late Anand Thakur, Resident of Village- Samaul P.S. Madhubani, District- Madhubani, Bihar.
- 1.12. Shubh Chandra Thakur, Son of late Anand Thakur, Resident of Village- Samaul P.S. Madhubani, District- Madhubani, Bihar.

... .. Defendants/Appellants

Versus

Sri Dharma Nath Thakur Son of late Shambhu Nath Thakur, Resident of Village- Samaul, P.S. Madhubani, District- Madhubani, Bihar.

... .. Plaintiff/Respondent

Appearance :

For the Appellant/s	:	Mr. Shashi Nath Jha, Adv.
	:	Mr. Sunny Kumar, Adv.
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 05-11-2019



Heard learned counsel for the appellant. However, there is no representation on behalf of respondent No.1.

2. This appeal has been filed for setting aside the order dated 22.05.2016/24.05.2016 passed by learned Sub-Judge 1st, Madhubani in Title Suit NO. 554 of 2014 by which the learned court below has allowed the injunction petition filed on behalf of plaintiff- respondent No.1 under Order 39 Rule 1 and 2 and has enjoined all the parties of the suit from alienating any part of suit property during pendency of suit as well as to maintain the status quo over the suit land.

3. Plaintiff/respondent No.1 had filed a suit for partition giving rise to Title Suit No. 554 of 2014 for partition of suit land as detailed in schedule of the plaint. Further prayer of the plaintiff was to declare the gift deed dated 10.09.1993 as well as sale deed dated 28.06.2011, as detailed in schedule 3 of the plaint, to be illegal and void ab initio as well as to declare registered deed of partition illegal and not binding upon him.

4. The defendant appeared and contended that suit for partition is not maintainable as the joint family property has been partitioned by a registered deed of partition way back in the year 1984 and in terms of said partition the respective parties have come in possession of their allotted share and are



dealing with their share as allotted in the said registered partition and prayed to dismiss the petition filed under Order 39 Rule 1 and 2 CPC by the plaintiff.

5. The court below after hearing the parties, allowed the injunction petition of plaintiff on the ground that defendant appellant had alienated portion of land detailed in schedule 1 and 2 of the plaint. However, it was submitted on behalf of defendant that he had executed sale deed only of those properties which were allotted to him by registered deed of partition of 1984. It has been further submitted that declaration with respect to deed of gift dated 10.09.1993 is barred by limitation.

6. From the materials available on record, it transpires that a partition between the parties took place by a registered deed of partition in 1984 and pursuant to said partition, the parties have come in possession of their allotted share and thereafter dealing with their allotted share as per their need and choice.

7. The defendant has categorically denied that he has made any alienation of the property which was allotted to the plaintiff in his share in the partition of 1984.

8. Since it is an admitted fact that there had been a



registered deed of partition in 1984 which is being challenged by the plaintiff, as such, he has no prima facie case as there is no unity of title and jointness of possession of the parties over the joint family property. However, without interfering with the order of trial court, the same is modified to the extent that in case of necessity the defendant shall approach the trial court and seek permission for alienation of suit land which was allotted to him in his share in the deed of partition in 1984, as stated in his written statement and, if any, such petition is filed by the appellant defendant, the court below shall grant him permission for alienation of said properties and if there is necessity of any repair or construction to be made in the property which is in possession of the defendant, the trial court shall grant permission on application being filed by the defendant-appellant. The trial court is further 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.

9.The miscellaneous appeal is disposed off.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.11.2019
Transmission Date	N.A.

