

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.934 of 2017

1. Shushil Kumar Yadav son of Late Kapileshwar Prasad Mandal
2. Sunil Kumar Yadav, son of Late Kapileshwar Prasad Mandal
3. Sushant Kumar, son of Shri Sushil Kumar Yadav
4. Prashant Kumar, son of Shri Sunil Kumar Yadav
5. Dhiraj Kumar, Minor son of Shri Sunil Kumar Yadav, through his legal guardian and next friend his father Shri Suni
6. Prince Kumar, Minor son of Shri Sunil Kumar Yadav, through his legal guardian and next friend his father Shri Suni All are residents of Village- Itahari, P.S.- Ghailarh, District- Madhepura.

... .. Appellant/s

Versus

1. Baijnath Mandal and Ors son of Late Raghunandan Mandal
2. Ranjit Kumar, son of Shri Baijnath Mandal Respondents No. 1 and 2 Resident of Village- Itahari, P.S. Ghailarh, District- Madhepura.
3. Smt. Subhadra Devi, W/o Shri Rajendra Prasad Yadav, D/o Late Raghunandan Mandal, Resident of Village- Nadhi, P.S.- Madhepura, District- Madhepura.
4. Smt. Radha Devi, W/o Shri Shivendra Prasad, D/o Late Raghunandan Mandal, Resident of Village- Mohanpur, P.S. District- Madhepura.
5. Smt. Asha Devi, W/o Shri Bhola Prasad Yadav, D/o Late Raghunandan Mandal, Resident of Village- Maheshpur, P.S. Pipra, District- Supaul.
6. Smt. Sudha Devi, W/o Shri Chandeshwari Prasad Yadav, D/o Late Raghunandan Mandal, Resident of Village- Gobargadha, P.S. Sour Bazar, District Saharsa.
7. Randhir Prasad Yadav, son of Late Bholanath Mandal
8. Sudhir Prasad Yadav, son of Late Bholanath Mandal
9. Manibhusan Kumar @ Laltu Kumar, son of Shri Randhir Prasad Yadav
10. Sudhanshu Kumar, son of Shri Sudhir Prasad Yadav
11. Smt. Dulari Devi W/o Shri Bambam Yadav, D/o Bholanath Mandal, Resident of Village- Turkahi, P.S. District- Madhepura. Respondents No. 7 to 11, Resident of Village- Turkahi, P.S. District- Madhepura.
12. Smt. Nilam Devi, W/o Shri Sukhdeo Yadav, D/o Late Bholanath Mandal, Resident of Village- Chiknikhar, P.S.- Gahariya, District- Madhepura.
13. Ramchandra Yadav, son of Late Kailu Prasad Mandal



14. Amrendra Yadav, son of Late Kaily Prasad Mandal
15. Shiv Kumar Yadav, son of Late Kailu Yadav Mandal
16. Rajesh Kumar, son of Ramchandra Yadav
17. Brajesh Kumar, son of Ramchandra Yadav
18. Bablu Kumar, Minor son of Shri Amrendra Yadav through his natural guardian and father Amrendra Yadav.
19. Nishu Kumar, Minor son of Shri Shiv Kumar Yadav, through his natural guardian father Shiv Kumar Yadav, Respondent No. 13 to 19, Resident of Village- Itarhi, P.S. Ghailarh, District- Madhepura.
20. Smt. Renu Devi, W/o Shri Jawahar Yadav, D/o Late Kapileshwar Prasad Mandal, Resident of Village- Koshalipatti, P.S. Pipra, District- Supaul.
21. Smt. Ranjan Devi, W/o Shri Sadanand Yadav, D/o Late Kapileshwar Prasad Mandal, Resident of Village- Jibachhipur, P.S. Gamharya, District- Madhepura.
22. Badri Gupta, son of Late Mahadeo Ram,
23. Bhumi Yadav, son of Late Barkan Yadav
24. Kishun Poddar, son of Late Ghuran Poddar
25. Bechan Poddar, son of Late Ghuran Poddar
26. Satya Narayan Choudhary, son of Late Prithwi Choudhary
27. Sadanand Choudhary, son of Late Prithwi Choudhary
28. Sukhdeo Yadav, son of Late Gosai Yadav
29. Siheshwari Mukhiya, son of Late Bhulan Mukhiya
30. Hrinandan Yadav, son of Ram Prasad Yadav
31. Ram Bahadur Yadav, son of Late Nunulal Yadav
32. Shashtri Yadav, son of Late Nunulal Yadav Respondent No. 22 to 32, Resident of Village- Mouza- Chini, P.S.- Gamhariya, District- Madhepura.
33. Dinbandhu Yadav, son of Late Bambhola Yadav
34. Suresh Yadav, son of Late Bambhola Yadav
35. Ramesh Yadav, son of Late Bambhola Yadav Respondent No. 33 to 35, Resident of Village- Bash Thumha, P.S. Pipra, District Supaul.
36. Gujo Ray, son of Late Jamedar Ray
37. Mangal Ray, son of Late Jamedar Ray
38. Chhutahru Ray, son of Lakhan Ray
39. Rustam, son of Late Ramjan
40. Sikendra, son of Late Ramjan
41. Surya Narayan Yadav, son of Late Kon Yadav



42. Sushil Yadav, son of Late Kari Yadav
43. Ajen Yadav, son of Late Kari Yadav
44. Nand Kumar Yadav, son of Late Kari Yadav
45. Taranand Mukhia, son of Late Kailu Mukhia
46. Bindeshwari Mukhia, son of Late Kailu Mukhia
47. Chandeshwari Mukhia, son of Late Kailu Mukhia
48. Chhotu Yadav, son of Late Nathan Yadav
49. Deo Krishna Yadav, son of Late Bhupendra Yadav Respondent No. 36 to 49,
Resident of Village- Murho, P.S. District- Madhepura.
50. Bishundeo Yadav, son of Damodar Yadav, Resident of Village- Murho
Budhi, P.S. District- Madhepura.
51. Sadanand Yadav, son of Late Guneshwar Yadav
52. Harinandan Yadav, son of Late Guneshwar Yadav
53. Radhanandan Yadav, son of Late Guneshwar Yadav
54. Dayanand Yadav, son of Late Guneshwar Yadav Respondent No. 50 to 54,
Resident of Village- Chikni Phulkaha, P.S.- Gamharia, District- Madhepura.
55. Upendra Ray, son of Late Thakur Ray
56. Mangal Ray, son of Late Anant Prasad Ray
57. Basudeo Yadav, son of Late Ajmeri Yadav Respondent No. 55 to 57,
Resident of Village- Chikni Phulkaha, P.S. Gamharia, District- Madhepura.
58. Ramjee Mukhiya, son of Late Anant Mukhiya
59. Jagdish Mukhiya, son of Late Anant Mukhiya
60. Pramod Mukhiya, son of Late Anant Mukhiya
61. Chauthi Mukhiya, son of Late Anant Mukhiya Respondent No. 58 to 61,
Resident of Village- Chikni Fulkaha, P.S.- Gamhari, District- Madhepura.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Dr. Amrit Abhijat, Adv
For the O.P. No. 1 to 6 : Mr.S.S. Dwivedi, Sr. Adv, Mr. Parth Gaurav, Adv,
Mr. Anshu Raj Singh, Adv and Mr. Shambhavi
Shankar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 24-04-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed on behalf



of the appellants/plaintiffs for setting aside the order dated 01.09.2017, passed by learned Civil Judge(Sr. Division)-IV, Madhepura in Title Suit No. 426 of 2016, dismissing the petition filed by plaintiff-appellants under Order 39 Rule I & II of CPC for grant of injunction.

3. Appellants/plaintiff filed Title (Partition) Suit No. 426 of 2016 on 24.08.2016 in the court of learned Civil Judge (Sr. Division), Madhepura, for partition of suit land claiming 1/8 share in joint family property pleading therein that plaintiffs and defendants are members of Hindu undivided family and the properties are still joint and liable for partition of suit.

4. Plaintiffs filed an application under Order 39 Rule I and II of CPC to restrain defendants from alienating the suit land during pendency of partition suit against which defendants no. 1 and 2 filed their show cause.

5. Dwarika Mandal was common ancestor of Plaintiff and Defendants 1 to 4 and had considerable landed properties, who died leaving behind Ghutar Mandal as his sole successor who also added to the joint family property and died in jointness and there has been no partition by metes and bounds but for convenience parties are cultivating separately over some of the suit lands but properties are still joint and there is unity of title



and possession over the suit land as detailed in schedule of plaint.

6. Defendants have opposed the injunction petition stating therein that the suit properties have already been partitioned by metes and bounds. Many properties which has been shown by Plaintiffs as joint family property are self acquired property of Defendants and they are coming in exclusive possession of these properties which are not liable to be partitioned.

7. The court below after considering the rival submissions had held that the Plaintiffs themselves have sold different properties which they claim to be joint in their plaint before filing of the suit and during pendency of suit and in recital of such sale deeds, Plaintiffs have accepted previous partition and exclusive possession over the sold land, as such their own conduct demolishes their case of jointness and as such, the trial Court has refused to grant temporary injunction in favour of Plaintiffs as they failed to establish prima facie case and dismissed the injunction petition.

8. After hearing the parties and perusing the impugned order, this Court does not find any error, illegality or infirmity in the order passed by the court below, as such the present



miscellaneous appeal is dismissed. However, in case of necessity both the parties shall obtain permission of the court where the suit for partition is pending for any alienation of suit land or making any construction over the suit land. This order is subject to final outcome of the partition suit.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.06.2019
Transmission Date	NA

