

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.291 of 2013

Against the order dated 23.01.2013, passed by the learned Sub-Judge-I, Sitamarhi, in Title Partition Suit No. 112 of 2011.

Prema Devi, W/O Ram Kumar Thakur, Resident of Village - Panchor, P.S - Riga, Distt. - Sitamarhi.

... .. Defendant 2nd Set/Appellant

Versus

1. Ram Bahadur Singh
2. Ram Binod Singh
3. Surendera Singh
4. Mahendra Singh
5. Ram Sanjeevan Singh
6. Arun Singh
7. Shyam Sunder Singh

All 1 to 7 sons of Late Mahavir Singh.

8. Ram Kishore Singh
9. Raj Kishore Singh
10. Awadh Kishore Singh
11. Baij Nath Singh

8 to 11 sons of Late Raghubir Singh

All are resident of Babhangama Tole Gamhariya, Post - Gamhariya, P.S. - Mezorganj, Distt. - Sitamarhi.

..... Plaintiff/Respondent

12. Shiv Shankar Singh
13. Ram Shankar Singh
14. Dev Shankar Singh

12 to 14 sons of Late Ram Kumar Singh

All are resident of Babhangama Tole, Gamhariya, Post - Gamhariya, P.S. - Mezorganj, Distt – Sitamarhi.

..... Plaintiffs 2nd Set/Respondents

15. Mithila Bihari Singh
16. Ram Bihari Singh

15 and 16 both are sons of Late Bishwanath Singh

17. Most. Shiv Kuer, W/O Late Basudeo Singh
18. Hari Kishore Singh
19. Shree Kishore Singh

18 and 19 both are sons of Late Basudeo Singh

All are resident of Babhangama Tole, Gamhariya, Post - Gamhariya, P.S. - Mezorganj, Distt – Sitamarhi.

..... Plaintiffs/Respondents

20. Ajay Prasad Gupta, S/O Shree Ram Chandra Prasad Gupta

21. Smt. Urmila Devi, W/O Ramashish Rai

Both are resident of Sinduriya Chawk, P.O + P.S. - Baiganiya, Distt – Sitamarhi.

..... Defendants 1st Set/Respondents

22. Chanchla Devi, W/O Sanjay Kumar Singh, D/O Late Jamuna Singh
23. Jagarnath Singh
24. Kedar Singh



Both are sons of Late Raghunath Singh
Resident Of Vill. - Babhangama Tole Gamhariya, P.S. - Gamhariya, P.S. -
Mezorganj, Distt. - Sitamarhi.

..... Defendant 2nd Set/Respondents

Appearance :

For the Appellant/s : Mr. Vijay Kumar Mishra, Advocate
Mr. Krishna Murari, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 29-01-2019

Heard learned counsel for the appellant. No one
appeared on behalf of the respondents.

2. This appeal has been preferred, under Order
43, Rule 1(5) of the Code of Civil Procedure, against the order
dated 23.01.2013, passed by the learned Sub-Judge-I, Sitamarhi,
in Title Partition Suit No. 112 of 2011.

3. Title Partition Suit No. 112 of 2011 was
brought by respondent Ram Bahadur Singh and others against
the appellant and others for partition of the joint family property
in the court of learned Sub-Judge-I, Sitamarhi.

4. The appellant was defendant second set in the
suit. The plaintiffs and some of the defendants compromised the
suit and on the prayer of the plaintiff of the suit, by the
impugned order dated 23.01.2013, the learned court below
allowed withdrawal of the suit.

5. Submission of the learned counsel for the



appellant is that in a partition suit each and every co-sharer is a plaintiff as well as defendant. Hence, the court below should have allowed the prayer of appellant for substitution as plaintiff so that share of the appellant could also have been partitioned. Hence, the learned court below has illegally and with material irregularity exercised the jurisdiction which resulted in failure of justice.

6. The record of this appeal reveals that the appeal has already been dismissed for non-compliance of peremptory order against some of the respondents, namely, respondent no. 5, 6, 9, 20 and 21. In absence of those respondents, no relief can be granted to the appellant. Hence, this appeal stands dismissed with liberty to the appellant to file a suit for partition if so advised.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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