

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.59 of 2018

1. Ram Udgar Singh S/o Jarula Singh,
2. Mukesh Kumar, Son of Late Ram Shreshtha Singh,
3. Rajiv Kumar, Son of Late Ram Shreshtha Singh,
4. Sanjeev Kumar @ Sanjiv Kumar, Son of Late Ram Shreshtha Singh, All residents of Village Machaha, P.O. Ulao, P.S. Muffasil, Pargana- Malki Anchal, Sub Registry, Sub Division and District- Begusarai.

... .. Petitioner/s

Versus

1. Sanjay Kumar
2. Ajay Kumar Bhardwaj, Both Sons of Rajendra Prasad resident of Village Bagdog, P.O.- Matihani, Sub Division and District- Begusarai.
3. Vidya Devi, W/o Naresh Mohan Singh, resident of Mohalla- Lohianagar, P.S.- Suhridnagar, P.S.- Nagar Begusarai, Pargana- Ballia, Anchal, Sub Division, Sub Registry and District- Begusarai.
4. Babita Kumari, W/o Arvind Kumar Singh Resident of Village Anandpur, Panhas, Pargana- Ballia, P.O- Suhridnagar, P.S. Nagar, Begusarai, Anchal, Sub Division, Sub Registry and District Begusarai. Both sons of Brahamadeo Prasad Singh.
5. Bandana Kumari, W/o Shravan Kumar, resident of Village Nakti Tola, Ramdiri, P.S. and Anchal- Matihani, Sub Division, Sub Registry and District- Begusarai.
6. Ram Babu Singh,
7. Mahesh Prasad Singh,
Both sons of Late Adhik Lal Singh.
8. Abhishek Kumar,
9. Avinash Kumar, Both Sons of Late Shyam Kishor Singh All residents of Village Machaha, P.O. Ulao, P.S.- Muffasil, Pargana- Malki Anchal, Sub Regitry, Sub Division and District- Begusarai.
10. Shambhu Kumar Singh, S/o Sri Radhe Shyam Singh, Resident of Village Machaha, P.O. Ulao, P.S.- Muffasil, Pargana- Malki Anchal, Sub Regitry, Sub Division and District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate
		Mr. Aditi Hansaria, Advocate
For the Respondent No.10:		Mr. J.S. Arora, Sr. Advocate
		Mr. Gaurav Pratap, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT



Date : 01-09-2022

Heard Mr. Nikhil Agrawal, learned counsel for the petitioners and Mr. J.S. Arora, learned senior counsel appearing for the Respondent No. 10.

2. A Title Suit bearing No. 482 of 2016 for declaration of title has been filed by the plaintiffs/respondents 1st set on the ground that by virtue of previous partition held between the parties, they have acquired right, title and interest upon the suit land. The petitioners are defendant 1st set in the suit.

3. The petitioners are aggrieved by the impugned order dated 25.11.2017 passed by the learned Sub Judge-I, Begusarai, in Title Suit No. 482 of 2016 by which the learned Trial Court has recalled its earlier order dated 15.11.2017 wherein the suit was transferred to the Lok Adalat for settlement, at the behest of the respondent No. 10/intervenor applicant.

4. Learned counsel for the petitioners submits that the impugned order recalling the case from the Lok Adalat is bad in law and learned Trial Court has committed material irregularity and grave error by recalling the order dated 15.11.2017 by which the record was sent to the permanent Lok Adalat for settlement. He further submits that as per the scheme of the Legal Services Authorities Act, 1987 there is no provision in the Act as well as in the Rules framed there-under giving power to the Court to recall



the records from the permanent Lok Adalat once it has been referred by the competent court.

5. On the other hand, Mr. J.S. Arora, learned senior counsel appearing for the respondent No. 10/intervenor petitioner submits that the petitioners are the co-sharers of the plaintiffs as well as other defendants. The suit in question has been filed in collusion with the defendants/plaintiffs for declaration of title over the land which is still a joint family properties and the petitioners belong to the branch of Tulsi Singh.

6. He further submits that a petition under Order I Rule 10 (2) CPC was filed by the intervenor petitioner (respondent No. 10). On 6.10.2017 the learned Trial Court fixed the suit on 15.11.2017 for hearing on the petition filed under Order I Rule 10 (2) CPC. Though the case was fixed on 15.11.2017 for hearing on the petition filed by the intervenor respondents for impleadment, but at the request of defendant Nos. 5 to 8 the record was sent to the Lok Adalat for settlement. Accordingly, the submission of learned senior counsel is that in exercise of inherent power under Section 151 CPC and in order to correct the mistake inasmuch as the date was fixed for deciding the petition for impleadment filed by the respondent No. 10, by the impugned order, the order dated 15.11.2017 has been recalled by the Trial Court. Accordingly,



Trial Court has not committed any material illegality while passing the impugned order.

7. I have heard learned counsel for the parties.

8. From perusal of the materials available on the record it appears that the suit was filed for declaration of title on the ground that parties have already partitioned their joint family properties and by virtue of it they acquired their right, title and interest upon suit property.

9. From the genealogical table annexed along with the copy of the plaint it transpires that the plaintiff did not mention the name of descendants of Shambhu Singh, i.e. grand son of Ram Gulam Singh. The respondent No. 10 is grand-son of Ram Gulam Singh who filed a petition under Order I Rule 10(2) CPC for his impleadment as defendant in the suit. In the plaint which is part of this petition at Annexure-1 (paragraph-4) the plaintiff has stated that sometime in the year 1970 sons of late Nandu Singh and Tulsi Singh felt hardships in remaining joint and as such by amicable oral partition the joint family property was partitioned by metes and bound and in that partition each branch of sons of Nandu Singh and Tulsi Singh acquired his exclusive possession over the land so allotted in the exclusive *patti* of each branch to the exclusion of any concern of the other branch by having their right,



title, interest thereon and as such the descendants of the sons of late Nandu Singh are not the necessary party to this suit.

10. From paragraph 4 of the plaint it also appears that the statement regarding the branch of Nandu Singh has been made in the plaint by the plaintiff and the respondent No. 10 is claiming to be the descendants of late Nandu Singh and late Ram Gulam Singh, and as such, respondent No. 10 filed a petition for impleadment in the suit under Order I Rule 10 (2) of the CPC. It appears that the suit was fixed for hearing on aforesaid petition filed by respondent No. 10 but without deciding that petition under Order I Rule 10(2) CPC, the record was transferred by order dated 15.11.2017 to the Lok Adalat for settlement/compromise.

11. In view of the aforesaid fact that the petition filed by the respondent No. 10 was not decided and by the impugned order dated 25.11.2017, the order dated 15.11.2017 has been recalled by the Trial Court and the record has been called from the Lok Adalat on the prayer of intervenor petitioner (respondent No. 10), I come to the conclusion that the learned Trial Court has not committed any error in law and/or jurisdictional error in passing the impugned order by recalling its previous order dated 15.11.2017.

12. Accordingly, this application stand dismissed.



13. However, there shall be no order as to costs.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.09.2022
Transmission Date	N.A.

