

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.187 of 2019

Sri Ranjit Kumar Sinha S/o Late Jitendra Kumar Sinha Resident of Sukhda Niwas, Kurji Industrial Estate Road, P.s.-Patliputra, Distt.-Patna

... .. Petitioner/s

Versus

1. Sri Sanjay Kumar Sinha S/o Late Jitendra Kumar Sinha Resident of Sukhda Niwas, Kuri Industrial Estate Road, P.s.-Patliputra, Distt.-Patna
2. Rajiv Kumar Sinha S/o Late Jitendra Kumar Sinha Resident of Sukhda Niwas, Kuri Industrial Estate Road, P.s.-Patliputra, Distt.-Patna
3. Jayant Sinha S/o Late Jitendra Kumar Sinha Resident of Sukhda Niwas, Kuri Industrial Estate Road, P.s.-Patliputra, Distt.-Patna
4. Rubi Sinha W/o Yatindra Prasad Sinha D/o Late Jitendra Kumar Sinha, Vill.-Mahmada, P.s.-Punpun, Distt.-Patna
5. Manju Sinha W/o Ashwane Kumar Sinha D/o Late Jitendra Kumar Sinha, resident of Road No. 3, Rajendra Nagar, P.s.- Kadamkuan, Distt.-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jitendra Kishore Verma
For the Respondent/s : Mr.Santosh Kumar

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

4 17-02-2022 Being aggrieved by the order dated 29.11.2018, passed by Sub judge-IV, Patna in Title Partition Suit No. 843 of 2011, the present civil miscellaneous petition has been preferred by the petitioner, who was defendant no.3 in that partition suit.

Heard both the parties.

It appears that the plaintiff/respondent (1st set) brought the suit for partition of the property, claiming it to be joint, whereas the defendant nos. 2 to 4 pleaded that the said property was already partitioned in the year 2008 by way of family arrangement. The question before the court below was to decide as to who shall lead the evidence first the plaintiff or the defendants? The learned court below after exercising its power under order 18 Rule 1 read with Section 151 of the Code of



Civil Procedure, directed defendant nos. 2 to 4 to lead their evidence first as they were claiming that the properties in the suit were already partitioned through family arrangement on 20.05.2008. The learned court below has also dealt in its order the rejoinder petition on behalf of defendant nos. 5 and 6 in which they have stated that the plaintiff and defendant nos. 2 to 4 are in collusion with each other to grab the share of these defendants and defendant nos. 2 to 4 have created the fabricated alleged deed of family arrangement. After taking notice to the entire fact, the learned court below directed defendant nos. 2 to 4 to lead their evidence first.

The learned counsel for the petitioner by citing the decisions in the cases of *Mohammad Jahangir @ Mohamad Jahagir Alam vs. Sajda Khatoon and others*, reported in 2007(4) PLJR 100, *Chandradeo Singh and others Vs. Moti Devi and others* reported in 1991(2) PLJR 666 and *Md. Shafiqudding & Anr. vs. Md. Harun Ansari @ Md. Harun Rashid & Ors.* in Civil Miscellaneous Jurisdiction No. 77 of 2016 under order dated 18.10.2016, has submitted that the plaintiff has right to begin unless the defendants admit the facts alleged by the plaintiff and contends that either on point of law or on some additional facts alleged by the defendants, the plaintiff is not entitled to any part



of the relief which he seeks. In that circumstance, the defendants have right to begin.

As discussed above, the plaintiff has pleaded the jointness of the property, whereas this fact is denied by defendant nos. 2 to 4 as well as defendant nos. 5 and 6. It is the peculiar case in which defendant nos. 5 and 6 have made averments that the plaintiff and defendant nos. 2 to 4 are in collusion. Moreover, defendant nos. 5 and 6 were not party to the family arrangement alleged to be taken by defendant nos. 2 to 4. Considering all the facts and circumstances, the court below directed the defendant nos. 2 to 4 to adduce their evidence first.

In these circumstances, I do not see any infirmity in the order of the learned court below, whereby he has directed the defendant nos. 2 to 4 to lead their evidence first. The impugned order need not be interfered with.

Accordingly, this civil miscellaneous petition is dismissed.

(Nawneet Kumar Pandey, J)

HR/-

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