

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.17 of 2018

Mosomat Mithilesh Choudhary D/O Late Ramashray Issar and W/O Late Shyam Narayan Choudhary
Resident of Village- Konaila, Ward No. 2, P.S.- Dalsingsarai, P.O. - Dalsingsarai, District – Samastipur (Bihar) Pin Code -848114

... .. Plaintiff- Petitioner

Versus

1.Nitu Choudhary W/O Late Sanjay Choudhary
2. Sakshi Priya Minor D/O Late Sanjay Choudhary
Resident of Village – Konaila Ward No. 2, P.S. - Dalsingsarai, P.O. - Dalsingsarai, District – Samastipur (Bihar) Pin Code – 848114 and at present resident of village Pataili, P.S. - Ujiarpur, District – Samastipur (Bihar)

..... Interveners / Defendants – Respondent 1st set

3. Jayanand Issar S/O Late Mukund Narayan Issar
4. Kameshwar Issar S/o Late Kapilshwar Issar
5. Rishi Kumar Issar S/O Late Kapileshwar Issar
6. Ashim Kumar Issar S/O Late Kameshwar Issar
7. Samant Kumar Issar S/O Late Kameshwar Issar
8. Sanjeev Kumar Issar S/O Late Kameshwar Issar
9. Ravish Kumar Issar S/O Late Kameshwar Issar
10. Raman Kumar Issar S/O Late Kameshwar Issar

All resident of Village – Konaila, Ward No. - 2, P.S. - Dalsingsarai, P.O. - Konaila, District – Samastipur (Bihar) Pin Code 848114

..... Defendants – Respondent 2nd set

11. Ashok Kumar Chaudhary, S/O Late Shyam Narayan Chaudhary, Resident of village- Konaila, Ward No. 2, P.S. - Dalsingsarai, P.O. - Konaila, District – Samastipur (Bihar) Pin Code 848114

..... Plaintiff – Respondent 3rd set

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar
For the Respondent/s : Mr. Sanjay Parasmani

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 16-08-2022 Heard Mr. Ashok Kumar, learned counsel for the petitioner and Mr. Sanjay Parasmani, learned counsel for the respondents.

The petitioner is the plaintiff in a suit bearing
Partition Suit No. 29 / 2017 filed for partition of the joint family



property left behind by her father being coparcener after amendment in the Hindu Succession Act made by the Hindu Succession (Amendment) Act, 2005. The petitioner is aggrieved by the order dated 20.11.2017 passed by Civil Judge Senior Division-1, Dalsingsarai by which the learned trial court has allowed the intervention application filed by the daughter- in-law and grand daughter of the plaintiff / petitioner on the ground that in the property held by the plaintiff the grand daughter has share as per Hindu Succession Act.

Learned counsel for the petitioner submits that learned trial court has committed grave error of law by allowing impleadment of the daughter- in- law and the grand daughter of the plaintiff as a party in the present suit inasmuch as per Section 6 of the Hindu Succession Act the petitioner is a coparcener and sub clause (2) of Section 6 clearly stipulates that any property to which a female Hindu becomes entitled by virtue of sub section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition. Accordingly his submission is that share of grand daughter, if any, will only be



decided after the death of the plaintiff and not in a suit filed by her seeking partition of the property held by her deceased father.

On the other hand, learned counsel for the respondents submits that suit has been filed by plaintiff in which she has made her elder son as a co-plaintiff but has deliberately left out the respondents who happens to be the wife of the deceased son of the plaintiff. He next submits that intention of the plaintiff and her elder son is to grab the property which may come in her share after disposal of the partition suit by the trial court.

After having heard learned counsel for the parties and going through the impugned order it appears that the learned trial court has not taken into consideration the relevant fact while allowing the respondent 1st set to become a party inasmuch the plaintiff has filed the suit for partition claiming her share in the joint family property belonging to her late father and as per Section 6 of the Hindu Succession Act she has exclusive right upon the said property if the suit is decided in her favour. Allowing the petition for impleadment on the basis of some right which may arise in favour of the grand daughter of the plaintiff after her death may not be a ground available to the respondent 1st set -interveners for impleadment.



Accordingly, I come to the conclusion that the order dated 20.11.2017 passed in Partition Suit No. 29 / 2017 by the learned trial court is not sustainable. The same is hereby set aside.

The petition stands disposed of.

(Anil Kumar Sinha, J)

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