

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.548 of 2022

Rekha Kumari wife of Sri Naresh Kumar Resident of Mohallah Quasim Bazar, PS-Quasim Bazar, PO and District -Munger.

... .. Petitioner/s

Versus

1. Darshan Kumar Mandal son of late Phagu Mahton, Resident of Village - Quasim Bazar, Mukbira, P.S. - Quasim Bazar, PO and Dist. - Munger.
2. Arun Kumar son of Late Phagu Mahton, Resident of Village - Quasim Bazar, Mukbira, P.S. - Quasim Bazar, PO and Dist. - Munger.
3. Vinay Kumar Mandal son of Late Phagu Mahton Resident of Village - Quasim Bazar, Mukbira, P.S. - Quasim Bazar, PO and Dist. - Munger.
4. Mostt. Lal Pari Devi wife of Late Lakhan Mahto Daughter of Late Phagu Mahton, Resident of Village Khawa, Chandar Tola P.S. - Medni Chowki, P.O. - Kiranpur, District- Lakhisarai.
5. Mostt. Indira Devi Wife of Late Ramji Mahto, Daughter of Late Phagu Mathon. Resident of Village Khawa, Chandar Tola P.S. - Medni Chowki, P.O. - Kiranpur, District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sumeet Kumar Singh

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 17-11-2022 The respondent 1st set / plaintiff filed a suit bearing Title Suit No. 236 of 2019 in the Court of Sub Judge 1st, Munger, for partition claiming 1/5th share in his favour *inter alia* on the basis that the suit property described at Schedule-II of the plaint having Khesra No. 278, Khata No. 49 measuring 3 Katha of land was purchased by the father of the plaintiff namely, Phagu Mahton by way of registered sale deed dated 26.02.1981.

The suit property is in joint possession and title of the plaintiff as well as defendants meaning thereby the



plaintiff -respondents have claimed that there is unity of title and possession of the plaintiff and defendants upon the suit property. The defendants are the brothers and legal heirs of the deceased brother of the plaintiff.

The petitioner filed an intervention petition stating therein that due to mistake committed by the Deed Writer, the Western boundary of the sale deed dated 26.02.1981 has wrongly been mentioned as Patna road instead of Niz Mukiiran and this fact would be evident from the sale deed dated 22.03.1982 which was executed by Janki Mandal in favour of Binay Kumar Mandal. Later on, Binay Mandal sold it in favour of Chanda Devi and Chanda Devi, in turn, sold it in favour of the petitioner.

Learned counsel for the petitioner submits that due to wrong description of the Western boundary in the sale deed dated 26.02.1981 the rights of the petitioner is affected inasmuch as vendors of both lands, purchased by the father of the plaintiff and the vendor of the petitioner is the same namely, Janki Mandal. The petition filed by the petitioner for her impleadment as defendant in the suit has been rejected by the impugned order dated 23.02.2022 on the ground that the suit is for partition between the plaintiff and the defendants, who are



members of the joint family and there is unity of title and possession amongst themselves. It is the petitioner -Rekha Kumari, who has no connection with the land purchased by the father of the plaintiff / defendants namely, Phagu Mahton, and if she is made a party, the nature of the suit for partition shall change to the suit for declaration of title and possession of Rekha Kumari (i.e. petitioner). The petitioner is not a co-sharer and in the partition suit the main issue which is to be decided is whether there was a previous partition amongst the parties or is there any unity of title and possession between them.

I have heard learned counsel for the parties and perused the materials on record including the impugned order. It is admitted position that the petitioner claims to have purchased 01 Katha of land in Plot No. 278 from Chanda Devi. If the rights of the petitioner gets affected due to wrong boundary mentioned in the sale deed purchased by the father of the plaintiff / defendants, the same would in my opinion will give rise to a separate cause of action, which the petitioner cannot pursue in a suit for partition filed between the family members. The respondents - plaintiff - defendants have not claimed any relief against the petitioner. It is settled legal position that no body can be permitted to be



impleaded as defendants against the wish of the plaintiff on the principle that the plaintiff is the *dominus litis*.

In view of the aforesaid discussions and the facts of the case, in my opinion, the impugned order dated 23.02.2022 passed in Title Suit No. 236 of 2019 does not require any interference by this Court.

Accordingly, this application is dismissed.

(Anil Kumar Sinha, J)

praful/-

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