

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.545 of 2021

Sheo Shankar Jhunhunwala Son of Late Bishambhar Prasad Jhunhunwala,
Resident of Agarwal House, Sowa Babu Chowk, Lal Bazar, P.S. Bettiah,
District - West Champaran.

... .. Appellant/s

Versus

1. Smt. Geeta Devi Wife of Late Vijay Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
2. Arun Kumar Jhunhunwala Son of Late Vijay Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
3. Mukesh Kumar Jhunhunwala Son of Late Vijay Kumar Jhunhunwala Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
4. Bal Kishan Jhunhunwala, Son of Late Shushil Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
5. Bal Mukund Jhunhunwala, Son of Late Shushil Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
6. Smt. Suman Devi, Wife of Late Shushil Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
7. Smt. Usha Devi, Wife of Late Lokesh Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
8. Kushal Kumar Jhunhunwala, Son of Late Lokesh Kumar Jhunhunwala, Resident of Mohalla Lal Bazar, Sowa Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
9. Smt. Aruna Devi Wife of Late Deoki Nandan Mandhokiya and daughter of Late Vijay Kumar Jhunhunwala, resident of Barharwa, P.S.- Barharwa, District - Sahebganj (Jharkhand).
10. Smt. Anshu Devi, Wife of Manish and Daughter of Late Vijay Kumar Jhunhunwala, resident of Hasanpur Bazar, P.S.- Samastipur, District-Samastipur.
11. Smt. Komal Devi Wife of Gaurav Sultania and daughter of Late Lokesh Kumar Jhunhunwala resident of Sikandarpur, P.O. and P.S. Sikandarpur, District - Muzaffarpur.
12. Pramod Kumar Jhunhunwala Son of Late Babu Durga Dutta @ Durga Prasad resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S.- Bettiah, Distt.- West Champaran.
13. Ajay Kumar Jhunhunwala Son of Late Babu Durga Dutta @ Durga Prasad resident of Mohalla Lal Bazar, Sua Babu Chowk, P.O. and P.S.- Bettiah,



Distt.- West Champaran.

14. Smt. Shakuntala Devi wife of Shri Raj Kumar Jain, Daughter of Late Durga Dutta, Resident of Gaushala Road, P.O., P.S. and Distt. - Bhagalpur.
15. Anup Kumar Agarwal, Son of Late Shambhu Prasad Agarwal @ Jhunjhunwala, natural son of Late Bishambhar Prasad Jhunjhunwala and adopted son of Late Madan Lal Agarwal, resident of Agarwal House, Sowa Babu Chowk, Lal Bazar, P.S. Bettiah, Dist.- West Champaran.
16. Smt. Santosh Devi Jhunjhunwala, Wife of Uma Shankar Jhunjhunwala resident of Agarwal House, Sowa babu Chowk, Lal Bazar, P.S. Bettiah, Dist. - West Champaran.
17. Vaibhav Kumar Agarwal, Son of Shri Shivshankar Jhunjhunwala, resident of Agarwal House, Sowa babu Chowk, Lal Bazar, P.S. Bettiah, Dist. - West Champaran.
18. Rohit Kumar Jhunjhunwala Son of Late Uma Shankar Jhunjhunwala, resident of Agarwal House, Sowa babu Chowk, Lal Bazar, P.S. Bettiah, Dist. - West Champaran.
19. Lalit Kumar Jhunjhunwala Son of Late Uma Shankar Jhunjhunwala, resident of Agarwal House, Sowa babu Chowk, Lal Bazar, P.S. Bettiah, Dist. - West Champaran.
20. Smt. Sulochna Devi Wife of Late Gauri Shankar Prasad Chowdhary and daughter of Late Bishambhar Prasad Jhunjhunwala, resident of Near Machodari Park, Varanasi, Kochari Gali, P.O. and District - Varanasi.
21. Sunil Kumar Jhunjhunwala alias Giga resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, Distt.- West Champaran.
22. Anil Kumar Jhunjhunwala alias Chhote Son of Late Satya Narain Prasad resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, Distt. - West Champaran.
23. Ashok Kumar Jhunjhunwala Son of Late Satya Narain Prasad resident of Lal Bazaar, Surya Sadan, Near Hazarimal Dharmshala, P.O. and P.S. Bettiah, Distt.- West Champaran.
24. Kiran Devi, Wife of Shree Prem Kumar Chowdhary and Son of Late Satya Narain Prasad, resident of Engineer's Colony, Flat No. 67, Nr. PGI South City, Lucknow, U.P.
25. Sunila Jhunjhunwala daughter of Late Satya Narain Prasad Jhunjhunwala, resident of Lal Bazar, Near Hazarimal Dharmashala, Surya Sadan, P.O. and P.S. Bettiah, Dist. - Champaran.
26. Shankar Lal @ Shankar Prasad Jhunjhunwala Son of Late Balbhadra Prasad, resident of M/s. Shivam Handloom, Dharmshala Road, P.O. and P.S. Bettiah, Dist.- Champaran.
27. Shambhu Prasad Agarwal, Son of Late Radha Krishna Dokania resident of Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District - Bhagalpur.
28. Ashok Kumar Agarwal, Son of Late Radha Krishna Dokania resident of Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District - Bhagalpur.



29. Bihari Agarwal, Son of Late Radha Krishna Dokania resident of Station Road, Bhagalpur, Near Ajay Medical Hall, P.O. and P.S. Bhagalpur, District - Bhagalpur.
30. Parvati Devi, Wife of Ramavatar Bagaria and daughter of Late Balbhadra Prasad, resident of Annappurna Textiles, Handia Patti, Near Inara, P.O. and P.S. and District - Bhagalpur.
31. Kailash Prasad @ Kailash Kumar Jhunjhunwala, Son of Late Niranjnanlal Jhunjhunwala, resident of 23/F, Ramlaldatta Road, P.O. and P.S.- Uttarpara, District - Hooghli, Kolkata.
32. Ashok Kumar Jhunjhunwala Son of Late Niranjnanlal Jhunjhunwala, resident of Mohalla - Lal Bazzar, Sua Babu Chowk, P.O. and P.S. Bettiah, District - West Champaran.
33. Smt. Sharda Devi, Wife of Late Devi Datta Saraya and daughter of Late Niraanjanlal, resident of Rani Ganj, Near Kali Mandir Bara Bazzar, District - Raniganj, West Bengal.
34. Gaytri Devi, Wife of Late Ram Avatar Prasad Jhunjhunwala Resident of 28, Shriram Thung Road, (Fulkaria Road), Banda Ghat, Salakia, Distt. - Howrah West Bengal.
35. Pradeep Kumar Jhunjhunwala Son of Late Ram Avatar Prasad Jhunjhunwala, resident of 28, Shriram Thung Road, (Fulkaria Road), Banda Ghat, Salakia, Distt. Howrah, West Bengal.
36. Deelip Kumar Jhunjhunwala Son of Late Ram Avatar Prasad Jhunjhunwala resident of 28, Shriram Thung Road, (Fulkaria Road), Banda Ghat, Salakia, Distt. Howrah, West Bengal.
37. Rajesh Kumar Jhunjhunwala Son of Late Ram Avatar Prasad Jhunjhunwala, resident of 28, Shriram Thung Road, (Fulkaria Road), Banda Ghat, Salakia, Distt. Howrah, West Bengal.
38. Smt. Rajkumari Devi, Wife of Late Bharat Kumar Jhunjhunwala Advocate, resident of Lal Bazaar, P.O. and P.S. Bettiah, District - West Champaran.
39. Dr. Parag Kumar, Son of Bharat Kumar Jhunjhunwala, resident of Sector 15 - A, Plot No. 486, Chandigarh, Haryana.
40. Bandana Devi Jhunjhunwala, Wife of Late Krishna Kumar alias Raju resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S Bettiah District West Champaran.
41. Abhishek Kumar Jhunjhunwala Son of Late Krishna Kumar alias Raju resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S Bettiah District West Champaran.
42. Amit Kumar Jhunjhunwala Son of Late Krishna Kumar alias Raju resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S Bettiah District West Champaran.
43. Prem Kumar alias Pappu, Son of Late Jagmohan Prasad, resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S Bettiah District West Champaran.
44. Smt. Chanchal Devi, Wife of Dinesh Kumar Untwalia, daughter of Late Jagmohan Prasad, resident of Lal Bazar, Sua Babu Chowk, P.O. and P.S Bettiah District West Champaran.



45. Mohan Prasad Son of Late Buru Mall resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. - West Champaran.
46. Om Prakash Son of Late Buru Mall resident of Narkstiaganj Market, P.O. and P.S. Shikarpur, Distt. - West Champaran.
47. Surendra Sah Son of Late Ramchandra Prasad resident of Narkatiaganj Market, P.O. and P.S.- Shikarpur, Distt. - West Champaran.
48. Ajay Sah Son of Late Ramchandra Prasad resident of Narkatiaganj Market, P.O. and P.S.- Shikarpur, Distt. - West Champaran.
49. Vijay Sah, Son of Late Ramchandra Prasad, resident of Narkatiaganj Market, P.O. and P.S.- Shikarpur, Distt. - West Champaran.
50. Rajeev Sah Son of Late Ramchandra Prasad, resident of Narkatiaganj Market, P.O. and P.S.- Shikarpur, Distt. - West Champaran.
51. Baldeo Prasad, Son of Late Sukhdeo Prasad, resident of Narkatiaganj Market, P.O. and P.S.- Shikarpur, Distt. - West Champaran.
52. Sanjay Kumar Jhunjhunwala, Son of Late Hari Prasad Jhunjhunwala, resident of Mohalla Lal Bazar, Hazarimal Dharamshala Road, P.O. and P.S. Bettiah, Distt. - West Champaran.
53. Rajesh Kumar Jhunjhunwala, Son of Late Madan Lal Jhunjhunwala, resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah, District - West Champaran.
54. Mohanlal Jhunjhunwala Son of Late Tularam resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah District - West Champaran.
55. Dr. Sohan Lal Jhunjhunwala Son of Late Tularam resident of Lal Bazar, Tin Lalten Chowk, P.O. and P.S. Bettiah District - West Champaran.
56. Smt. Sakuntala Devi Jhunjhuwala Wife of Late Ram Jhunjhunwala resident of Mohalla - Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah, District - West Champaran.
57. Ravi Kumar Jhunjhunwala Son of Late Ram Jhunjhunwala resident of Mohalla - Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah, District - West Champaran.
58. Shyam Jhunjhunwala Son of Late Govind Prasad Jhunjhunwala resident of Mohalla - Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah, District - West Champaran.
59. Krishna Jhunjhunwala Son of Late Govind Prasad Jhunjhunwala resident of Mohalla - Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah, District - West Champaran.
60. Mahesh Jhunjhunwala Son of Late Govind Prasad Jhunjhunwala resident of Mohalla - Lal Bazaar, New Bhartiya Vastralay, P.O. and P.S. Bettiah, District - West Champaran.
61. Kishori Giri Manager Giri Son of Late Badari Giri alias Badri Giri, resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia District - West Champaran.
62. Manger Giri, Son of Late Badari Giri alias Badri Giri, resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia District - West Champaran.



63. Sanjay Giri Son of Late Badari Giri alias Badri Giri, resident of Baishahi Tola, Lachhu Chappar (Virwa Tola), P.O. and P.S. Chanpatia District - West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mohit Agarwal, Advocate
For the Respondent/s : Ms. Priya Gupta, Advocate
Ms. Shweta Priya, Advocate
Ms. Sushmita Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 28-01-2022

Heard Mr. Mohit Agarwal, learned Advocate for the appellant/defendant and Ms. Priya Gupta for the respondent second set/defendant first set.

The appellant/defendant has challenged the order dated 29.01.2021 in Partition Suit No. 562 of 2009 wherein the defendants 1 to 4 and 26 to 28 have been restrained from disposing of the suit property temporarily till next one year to prevent multiplicity of suits.

It has been submitted on behalf of the appellant/defendant that the order is not good in the eyes of law as it is based on no consideration which should have weighed with the trial court in deciding an application under Order 39 Rule 1 and 2.



He further submits that the property which is sought to be partitioned was actually partitioned in the year 1902 only, which fact finds mention in the plaint. It has further been submitted that the court below has not at all considered as to who has alienated the property in dispute by six sale deeds and the issue of possession also has not even been seen prima facie for an order restraining the appellants/defendants from disposing of the property.

After having gone through the order, it appears that the suit has been filed for partitioning of property of Schedule 1 and Schedule 2 lands which are the joint property which remained in the state of jointness even after partition amongst the co-sharers and the self-acquired property of the adopting mother of Madan Lal. It further appears that part of the Schedule property has been alienated by way of six sale deeds.

In a partition suit, if the property is sold out before the suit is decided, it would definitely cause



irreparable loss to either of the parties unless special provision is made for restitution.

The court below has taken into consideration all the aspects of irreparable loss, preservation of property and balance of convenience in deciding the application under Order 39 Rule 1 and 2.

This Court does not find any necessity or justification to interfere with the order. All that this Court can direct is that the trial court to expedite the Partition Suit No. 562 of 2009.

With the aforesaid direction/observation, this Miscellaneous Appeal is disposed off.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2022
Transmission Date	

