

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.97 of 2019

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Ram Bidyasagar Yadav S/o Late Bholi Yadav R/o Village-Ekdara, P.S. and
Anchal-Khajauli, P.O. Mahua Ekdara, District-Madhubani

... .. Petitioner/s

Versus

1. Amar Yadav S/o Late Subedar Yadav R/o Village-Ekdara, P.O.-Mahua Ekdara, P.S. and Anchal-Khajauli, District-Madhubani
2. Birendra Yadav S/o Late Subedar Yadav R/o Village-Ekdara, P.O.-Mahua Ekdara, P.S. and Anchal-Khajauli, District-Madhubani
- 3.1. Amar Yadav S/O Late Sahdeo Yadav and Most. Malbhogiya Devi, Resident of Village Ekdara, P.O Mahua Ekdara, PS and Anchal Khajauli, District Madhubani.
- 3.2. Birendra Yadav S/O Late Sahdeo Yadav and Most. Malbhogiya Devi Resident of Village Ekdara, P.O Mahua Ekdara, PS and Anchal Khajauli, District Madhubani.
4. Shib Kumar Yadav S/o Late Nageshwar Yadav R/o Village-Ekdara, P.O.-Mahua Ekdara, P.S. and Anchal-Khajauli, District-Madhubani
- 5.1. Shiv Kumar Yadav S/o Late Nageshwar Yadav and Most Gangiya Devi, R/o Village Ekdara P.O. Mahua Ekdara, P.S and Anchal Khajauli, District-Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bhubneshwar Prasad
For the Respondent/s : Mr.Rajiv S. Dvivedi

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
CAV ORDER

15 19-12-2023 I have already heard the learned counsel for the
petitioner as well as the learned counsel for the respondents.

2. The petitioner, Ram Bidyasagar Yadav is son of Mosmatt Late Sanjha Devi whose petition under Order XXI Rule 97 was rejected by the concurrent orders of the Courts below. Being aggrieved by the order dated 12.02.2019 passed by A.D.J., VI, Madhubani in Misc. Appeal No. 14/2013 confirming the order dated 24.04.2013 passed in Miscellaneous Case No.



18/2003/ Execution No. 2/89, rejecting the application of Sanjha Devi under Order XXI Rule 97 of the CPC, this petitioner filed the present revision petition.

3. The Execution Case No. 2/1989 is pending for execution of the final decree passed in Partition Suit No. 173/1954 since 1989. The case of the petitioner is that his mother Sanjha Devi was daughter of one Damodar Yadav and Danvati Devi. Damodar Yadav died in 1948, i.e., prior to institution of Partition Suit No. 173 of 1954 leaving behind his three sons Dineshwar Yadav, Jitan Yadav and Janardan Yadav @ Manjay Yadav and Danvati Devi who were his heirs and legal representatives. Sanjha Devi is sister of Dineshwar Yadav, Jitan Yadav and Janardan Yadav. The claim of the petitioner is that Danvati Devi was a necessary party in Title Suit No. 173/54, but she was not made a party. In final decree of that partition suit, Patti No. 10 *Area 9 Katha 3 dhurs* was allotted to the share of Dineshwar Yadav, Jitu Yadav and Janardan Yadav. She claims further that a family partition had taken place between three brothers and mother of the Sanjha Devi and each of them was allotted 2 *kathas 5 dhurs* and 75 *dhurkis* of land in plot no. 4544. Sanjha Devi's claim is that she inherited the share of her mother, after the death of her mother. She was residing in the



allotted portion of the share of her mother by constructing a house. As such, she has every right to restrict and obstruct the execution of the decree as neither her mother nor she was impleaded in Partition Suit No. 173/54, whereas they were necessary parties. Her application under Order XXI Rule 97 was initially rejected by the Executing Court vide order dated 20.01.2006 against which she filed Civil Revision No. 378/2006 before this Court and this Court was pleased to allow the civil revision and set aside the order dated 20.01.2006 and directed the Executing Court to adjudicate upon the objection of the Sanjha Devi afresh. After providing opportunities of being heard to the parties, the learned Executing Court again rejected her objection under Order XXI Rule 97 and accordingly, her Miscellaneous Case No. 18/2003 was dismissed vide order dated 24.04.2013, against which she preferred Miscellaneous Appeal No. 14/2013 which was dismissed by the Additional District Judge-VI, Madhubani vide order under revision.

4. Learned counsel for the petitioner has submitted that the learned Executing Court as well as the Appellate Court committed gross illegality in rejecting the application filed by Sanjha Devi as she inherited the share of Danvati Devi and she was residing in the portion of that land after constructing a



house.

5. On the other hand, the learned counsel for the opposite party submits that the father of the Sanjha Devi died in 1948 and at that time the Hindu Succession Act, 1956 was not in existence. Her mother through whom she is claiming her right and possession had only a right to maintenance and she did not possess inheritable right in the properties left by her husband Damodar Yadav. Only three brothers of Sanjha Devi namely Dineshwar Yadav, Jitu Yadav and Janardan Yadav were the legal heirs of Damodar Yadav and Danvati Devi was not a necessary party in Partition Suit No. 173 of 1954. He has also submitted that the mother of the petitioner filed objection under Order XXI Rule 97 being in collusion with her three brothers as they had taken all the endeavours to prevent the decree from being executed.

6. It appears from perusal of the impugned orders that Danvati Devi, the mother of Sanjha Devi filed a Partition Suit No. 288/1973 which was dismissed vide order dated 28.09.1970. Danvati Devi preferred Title Appeal No. 105/1977 against the order of dismissal of her Partition Suit which was also dismissed by the Learned Additional District and Sessions Judge, Madhubani on 06.09.1982 and while dismissing the



appeal, the learned Additional District Judge-VI, Madhubani refused the prayer of Danvati Devi to declare the decree of Partition Suit No. 173/1954 as void.

7. Sanjha Devi, the mother of the petitioner was claiming her right, title and possession over the share through her mother Danvati Devi, but as a matter of fact, it has already been decided that her mother had no share in the properties of her husband. Consequently, her daughter, Sanjha Devi has no right or title over that land. The learned Court below has rightly rejected the application filed by Sanjha Devi under Order XXI Rule 97 of the C.P.C.

8. As such, I do not find any reason to interfere with the order dated 12.02.2019, passed by learned A.D.J., VI, Madhubani. Accordingly, the revision petition is dismissed.

9. The Execution Case No. 2/89 is pending for thirty four years. It has become a very old matter. The learned Court below shall take every effort to dispose of the case within four months. No adjournment shall be given. Not a date for more than seven days shall be given.

(Nawneet Kumar Pandey, J)

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