

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.415 of 2017

1. Hare Krishna Choudhary and Ors son of Late Govind Choudhary resident of village Mouzmabad, P.S. Bihpur, P.O. Narayanpur, District Bhagalpur.
2. Kamal Narayan
3. Uttam Kumar Both sons of Hare Krishna Choudhary
4. Kabita Choudhary wife of Shyam Sunder daughter of Hare Krishna Choudhary Serial No. 2 to 4 residents of village Mauzamabad, P.O. Narayanpur, P.S. Bihpur, District Bhagalpur.
5. Mamta Choudhary wife of Sushil Kumar resident of D - 704, Unique Apartment, Dwarika New Sector - 6, Delhi.

... .. Petitioner/s

Versus

1. Smt. Bimla Devi and Ors wife of Sri Siyaram Thakur resident of village Manikpur, P.S. Shahkund, District - Bhagalpur at present residing at Raja S.N. Road, P.S. Kotwali in the town and district of Bhagalpur.
2. Tapeshwari Devi wife of Manoranjan Thakur
3. Bal Krishna Jha son of Muni Nath Jha Both the Intervenor Respondents No. 2 and 3 residents of Raja S N Road, Bliss Cottage Moshakchak, P.S. Adampur, District Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kamal Kishore Jha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 31-08-2023

1. Heard learned counsel for the parties.

2. By the impugned order, the Sub-Judge has allowed the prayer of the respondent nos. 2 and 3 to be impleaded as party in the final decree proceeding.

3. It has been submitted by the decree holder that the Suit was decided on contest between the parties. Thereafter, the Title Appeal was also decided and after the Second Appeal,



the Civil Review was filed which has been dismissed. Now at the stage of preparation of final decree, the respondent nos. 2 and 3 had appeared and the Sub-Judge has allowed their application for being added as party.

4. It was contended by the respondent nos. 2 and 3 in the Court below that they were purchasers and, therefore, they were necessary party and they were in possession of a part of the Suit property therefore, they should be added as party and considering the same, their application has been allowed.

5. Learned counsel for the petitioners has submitted that the final decree proceedings have been initiated for carving out the shares in accordance with law. It is an admitted fact that the respondent nos. 2 and 3 have no concern with the land of the petitioners, and if they have some claim on the basis of sale deed of one of the parties, they could have filed an application under Order-21 Rule-97 of the Code of Civil Procedure but they cannot be added in the final decree proceeding.

6. Learned counsel for the respondent nos. 2 and 3 has supported the impugned order and he has submitted that since he has a valid claim over the part of the suit land, therefore, the impugned order should not be disturbed and the Court below has rightly added the respondent nos. 2 and 3 as a



party.

7. Considering the submissions of the parties, In my view, the impugned order is illegal and cannot be sustained. At this late stage when the process has been initiated for carving out the shares in accordance with the preliminary decree, the respondent nos. 2 and 3 cannot be impleaded as parties in the final decree proceeding on the basis of a sale deed dated 19.05.1982.

8. Accordingly, this application is allowed.

9. The order dated 15.09.2016 passed by Sub Judge 5th Bhagalpur in TS No. 34 of 1991 is set aside.

10. The Court below is directed to proceed with the carving out the shares in accordance with the preliminary decree within six months.

11. Let a copy of this order be communicated to the District Judge, Bhagalpur through FAX or e-mail forthwith.

(Sandeep Kumar, J)

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