

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1154 of 2016

1. Hakim Ram Son of Late Satya Narain Ram Resident of Village Mithepur, P.O. and P.S.- Garkha, District- Saran at Chapra.
2. Vakil Ram, Son of Late Ramayan Ram Resident of Village Mithepur, P.O. and P.S.- Garkha, District- Saran at Chapra.

... .. Petitioner/s

Versus

2. Ram Dulari Devi, wife of Late Bharat Ram Resident of Village Mithepur, P.O. and P.S.- Garkha, District- Saran at Chapra.
- 3.1. Chandeshwar Ram, S/o late Laldhar Ram @ Baldhar Ram Resident of Village Babhnaiya, P.S. Garkha, District- Saran.
- 4.1. Dharmnath Ram, S/o late Sita Ram Resident of Village Basdih, P.S. Marhowrah, P.O. Garkha , District- Saran.
- 4.2. Harendra Ram, S/o Dharmnath Ram Resident of Village- Basdih, P.S. Morhowrah, P.O. Garkha, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Singh, Advocate Mr. Vishesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 05-09-2023

1. Heard the learned counsel for the parties.

2. One Title Partition Suit of 99 of 1971 was decided on the basis of compromise. Two gift deeds dated 23.09.1946 and 15.10.1971 was executed in favour of the petitioners where part of the suit property but the petitioners were not added as defendant in the Title Partition Suit of 99 of



1971.

3. The petitioners filed Misc. Case No. 03 of 2005 for setting aside the judgment and decree passed in Title Partition Suit of 99 of 1971 and the same has been allowed by the Munsif-II, Chhapra by his order dated 06.03.2010 passed in Misc. case No. 03 of 2005.

4. The Respondents challenged the order dated 06.03.2010 in Misc. Appeal No. 46 of 2012/Record Registration No. 334 of 2014 which has been allowed by order dated 11.07.2016.

5. Learned counsel for the petitioners submits that as the gift deeds are in their favour, therefore, the petitioners are necessary party in the Title Partition Suit of 99 of 1971 and since the petitioners were not made party, therefore, the entire judgment and decree passed in Title Partition Suit of 99 of 1971 was fit to be set aside.

6. Learned counsel for the respondents submits that since the petitioners were not party in the original suit of 1971, therefore, they could not file an application for setting aside the judgment and decree of title suit under Order 23 Rule 3A and 151 of C.P.C.

7. Learned counsel for the respondents further



submits that the only option available to the petitioners was that they could have filed a separate suit for challenging the judgment and decree passed in Title Partition Suit of 99 of 1971 that it was not binding on them as the same was passed without making them party and which includes the properties which has been gifted to the petitioners.

8. I have considered the submission of the parties and I am also of the view that the petitioners could not have filed an application for setting aside the judgment and decree passed in Title Partition Suit of 99 of 1971 under Order 23 Rule 3A read with Section 151 of the C.P.C., but they could have filed and they can file a fresh suit for declaration that the judgment and decree passed in Title Partition Suit of 99 of 1971 is not binding on them.

9. In view of the above, this application is disposed of with liberty to the petitioners to file a fresh suit as observed above.

10. If any such suit is filed by the petitioners then the same shall be decided by the Court below in accordance with law and the limitation shall also be considered. Keeping in view the fact that Misc Case was filed in 2005 and the further proceeding arising out of Misc Case have continued till today.



12. Accordingly, this application is allowed.

(Sandeep Kumar, J)

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