

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1227 of 2018

1. Sunita Devi, Wife of Sri Anand Shankar Prasad, Daughter of Late Tetari Devi.
2. Mina Kumari, Wife of Sri Shivratan Prasad, Daughter of Late Tetari Devi. Both resident of Village- Barhara, P.S.- Athmal Gola, District- Patna. At present residing at Bank's Men Colony Chitragupt Nagar, P.S. Kankarbagh, District Patna.

... .. Petitioner/s

Versus

1. Sudha Devi, Wife of Ram Bharat Prasad, Daughter of Late Kedarnath Yadav, resident of Tetarawan, P.S.- Manpur, District- Nalanda.
2. Smt. Anita Devi, Wife of Sri Satyendra Singh, Daughter of Late Kedarnath Yadav, resident of Mohalla- Saidpur Khatal Gali, P.O.- Mahendru, P.S.- Kadamkuan, District- Patna. At present residing at House No. 47, Teachers Colony (near Nala), Post Office Road, Jamshedpur, P.S.- Mangu, District- East Singhbhum Jharkhand.
3. Baldeo Prasad Yadav, Son of Late Khyali Prasad Yadav.
4. Ajay Kumar Yadav, Son of Baldeo Prasad Yadav. Respondents No. 3 and 4 Resident of Mohalla- Rajendra Nagar Road No. 10/B, P.S. Kadamkuan, District- Patna.
5. Renuka Kumari, Daughter of Gopal Singh Yadav and Tetari Devi.
6. Menka Kumari, Daughter of Gopal Singh Yadav and Tetari Devi.
7. Anamika Rai, Daughter of Gopal Singh Yadav and Tetari Devi.
8. Binod Yadav, Son of Gopal Singh Yadav and Tetari Devi. Respondents No. 5 to 8 Resident of Village- Barhara, P.S.- Athmal Gola, District Patna. At present residing at Bank's Men Colony Chitragupt Nagar, P.S. Kankarbagh, District Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Advocate
		Ms. Y. Madhavi, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 17-07-2023

Heard learned counsel for the petitioners.

2. This Civil Miscellaneous Application has been filed
under article 227 of the constitution of India against the order



dated 27.02.2018 passed by learned Civil Judge, Senior Division-III, Patna in Title Partition Suit No. 328 of 2000 whereby and whereunder the learned Court below has rejected the objection application filed by the petitioners on the report of the Survey Knowing Pleader Commissioner for preparation of final decree and accepted the report of Survey Knowing Pleader Commissioner.

3. Brief facts of the case as per the application, are that respondent nos.1 and 2/plaintiffs filed suit for a partition of suit land vide Title Partition Suit No. 328/2000 to the extent of his share 44.43 paise, allotment of separate Takhta of his share and to put him in possession of the said Takhta by appointing Surevy Knowing Pleader Commissioner, which was decreed vide Judgment and Decree dated 13.08.2004 ex-parte against the petitioners. It was held that plaintiffs is entitled for share 44.43 paise and defendant nos. 1 and 2 are also entitled for share up to extent of 44.33 paise. The defendant no. 3 is entitled share up to the extent of 11.34 paise. The First Appeal No. 252 of 2004 is against the said Judgment and Decree filed by defendant nos. 1 and 2 had been dismissed on 05.09.2011. It is the claim of the petitioners that defendant no. 3 Tetari Devi could not appear as there was no proper service of summon. The heirs of defendant



no. 3 when got knowledge about the judgment and decree they filed one Misc. Case No. 04 of 2016 under Order 9 Rule 13 CPC which is pending. The petitioners filed applications for stay of the preparation of the final decree in view of pendency of Misc. Case No. 04 of 2016 and also filed objection petition on the report of the Survey Knowing Pleader Commissioner and both petitions have been rejected by the learned Court below.

4. Learned counsel for the petitioners submits that the petitioners were never served with any summon or notice of Title Partition Suit No. 328 of 2000 and got no intimation from the Survey Knowing Pleader Commissioner. Accordingly, the Survey Knowing Pleader Commissioner had filed a report without hearing the petitioners during the proceeding. He has not considered the convenience of the petitioners and has not evaluated the land/portion given in favour of petitioners and has allotted the share as per the decree which is not useful.

5. From perusal of the impugned order, it is clear that the learned Court below has observed that the petitioners failed to participate in the proceeding instead of being totally aware of the same. It is stated that registered notices were sent to legal heirs of late Tetari Devi i.e., petitioners who are the daughters of late Tetari Devi on the address on which they are shown to be residing but



they failed to appear and not participated in the whole process. The Court also observed that Takhtabandi proceeding continued for almost two years and the learned Commissioner had visited several times on the spot and carried out several measurement work but the petitioners have not approached him between the said period and after filing of the report by the learned Commissioner the objection petition has been filed without disclosing with respect of service of registered notice thrice at their address where they are residing.

6. In view of the facts and circumstances of the case, this Court does not find any jurisdictional error or illegality in the impugned order and the same is not liable to be interfered in its supervisory jurisdiction under Article 227 of the Constitution of India.

7. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

