

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.240 of 2024

1. Sarita Devi W/o-Late Subodh Kumar Resident of Village-Rajipur, P.S.-Dulhin Bazar, District-Patna, At Present Residing at Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.
2. Mukund Kumar S/o Late Subodh Kumar Resident of Village-Rajipur, P.S.-Dulhin Bazar, District-Patna, At Present Residing at Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.
3. Sonal Singh D/o-Late Subodh Kumar Resident of Village-Rajipur, P.S.-Dulhin Bazar, District-Patna, At Present Residing at Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.

... .. Petitioner/s

Versus

1. Sunita Kumari W/o -Pramod Kumar Resident of Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.
2. Pramod Kumar S/o-Late Sharad Chandra Prasad Resident of Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.
3. Binod Kumar S/o-Late Sharad Chandra Prasad Resident of Ashok Nagar, Road No. 8, P.S.-Kankarbagh, District-Patna.
4. Abha Devi D/o Late Sharad Chandra Prasad Resident of Ashok Nagar, Road No. 9, P.S.-Kankarbagh, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rahul Kumar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 05-12-2024 Heard learned counsel for the petitioner on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The plaintiffs/petitioners are aggrieved by the order dated 06.01.2024 passed by the learned Sub Judge-IV, Patna in Partition Suit No. 383 of 2008 whereby and whereunder the petition dated 16.12.2016 filed by the plaintiffs/petitioners under Order XVIII Rule 1 of the Code of Civil Procedure (hereinafter



referred to as 'the Code') has been rejected by the learned trial court.

3. Learned counsel for the petitioners submits that the petitioners are the plaintiffs and they have filed a suit for partition of $\frac{1}{4}$ share and also for declaration against a gift deed as well as some sale deeds. The defendants appeared and claimed that there has been a partition earlier in the family with regard to the suit properties and as such there was no necessity for filing of the present suit. Learned counsel further submits that as the defendants came up with this stand claiming prior partition, the plaintiffs/petitioners moved before the learned trial court by filing an application under Order XVIII Rule 1 of the Code which speaks about the right to begin of the parties and if the defendants claimed that plaintiffs are not entitled for the relief sought for and in that case, the defendants have the right to begin. However, the learned trial court did not consider this fact and dismissed the application filed by the plaintiffs/petitioners which has been challenged in this miscellaneous petition. Learned counsel further submits that the impugned order is not sustainable as the learned trial court failed to exercise the jurisdiction vested in it and the impugned order is contrary to the law and goes against the provisions of



Order XVIII Rule 1 of the Code.

4. Perused the record.

5. From perusal of the impugned order, I find that the application dated 16.12.2016 filed by the plaintiffs/petitioners has been rejected by the learned trial court solely on the ground that previously, on 27.03.2012, petitioners filed a similar application with same intent and which was disposed of by the learned trial court vide order dated 04.07.2012. Thereafter, the application dated 16.12.2016 was filed and considering the earlier disposal of the application dated 27.03.2012, the learned trial court rejected the application dated 16.12.2016. Therefore, I do not find any infirmity in the impugned order dated 06.01.2024 as once the application dated 27.03.2012 has been disposed of vide order dated 04.07.2012, if the said order has not been challenged, the said order has attained finality. Naturally the subsequent application is barred under the provisions of *res judicata* and the learned trial court has rightly proceeded in the matter and rightly rejected the application dated 16.12.2016. The Hon'ble Apex Court in the case of ***Barkat Ali & Anr. Vs. Badrinarain (Dead) By LRS.***, reported in ***2008 (4) SCC 615*** in paragraph no. 13 held that the principles of *res judicata* not only apply in respect of separate proceedings



but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.

6. Finding no merit in the present petition, the same is dismissed.

(Arun Kumar Jha, J)

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