

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.264 of 2024

Aakanksha Singh Daughter of Lt. Gen. Anant Prasad Singh 4G-204, Awho, Gurjinder Vihar, Greater Noida, Pin Code- 201310, Police Station- Kasana, District- Gautam Budhh Nagar (U.P.).

... .. Petitioner/s

Versus

1. Sudhanshu Kumar Son of Late Ram Bahadur Singh Resident of 205, Patliputra Colony, Police Station- Patliputra, District- Patna (800013).
2. Gyanendu Kumar Son of Late Ram Bahadur Singh Resident of 205, Patliputra Colony, Police Station- Patliputra, District- Patna (800013).
3. Purnendu Kumar Son of Late Ram Bahadur Singh Resident of 205, Patliputra Colony, Patna, District- Patna (800013).
4. Jyotirindu Kumar Son of Late Ram Bahadur Singh Resident of 205, Patliputra Colony, Police Station- Patliputra, Police Station- Patliputra, District- Patna (800013).
5. Reeta Singh Daughter of Late Ram Bahadur Singh, Wife of Nagendra Kumar Resident of D 1.7, NBCC Vibgyor Towers, New Town, Kolkata, Police Station- New Town, District- Kolkata (700156).
6. Chandrawati Singh Wife of Late Ram Bahadur Singh Resident of 205, Patliputra Colony, Patna, Police Station- Patliputra, District- Patna (800013).
7. Anushka Singh Daughter of Lt. Gen. Anant Prasad Singh 4G-204, Awho, Gurjinder Vihar, Greater Noida, Pin Code- 201310, Police Station- Kasana, District- Gautam Budhh Nagar (U.P.).

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-10-2024

Heard the learned counsel for the petitioner.

02. The petitioner is aggrieved by the order dated 7th of February, 2024 passed by the learned Sub-Judge-I, Patna in Title Partition Suit No. 354 of 2023 whereby and whereunder the learned trial court disposed of the suit and returned the plaint



under Order 7 Rule 10 of the Code of Civil Procedure, 1908 (for short 'the Code').

03. Learned counsel for the petitioner submits that petitioner no. 1 and respondent no. 7 are the plaintiffs before the learned trial who filed Title Suit No. 354 of 2023 for partition and the other respondents are defendants. Learned counsel further submits that a number of immovable properties are involved in the subject matter of the suit and have been depicted in Schedule-A and Schedule-B of the plaint. In Schedule-A, two properties mentioned are within the territorial jurisdiction of the learned Sub Judge-I, Patna. Still, the learned Subordinate Judge committed an error of record while holding that only one property mentioned in Para-1 of Schedule-A lies under the jurisdiction of the court and under a wrong interpretation of law, ordered for return of the plaint under Order 7 Rule 10 of the Code. The learned trial court wrongly proceeded on the premises that as a number of suit properties mentioned in Schedule-A and B are lying in New Delhi, U.P. and other places, the court in Patna has no jurisdiction. Learned counsel referred to Section 17 of the Code which makes it clear that a suit can be instituted at any place where any portion of the property or part of the property lies. Learned counsel further submits that in case



the immovable property is situated within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.

In support of his contention, learned counsel referred to the decision of Hon'ble Supreme Court in the case of *Shivnarayan v. Maniklal*, reported in *(2020) 11 SCC 629*, wherein the Hon'ble Supreme Court has held that Sections 16 and 17 of the Code are part of one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. The Hon'ble Supreme Court further held that a suit in respect immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated. Thus, the learned counsel submits that on plain reading of provisions of law as well as authority of Hon'ble Supreme Court, it is clear that the learned trial court has committed an error of jurisdiction and the impugned order is not sustainable. Learned counsel further submits that he has not taken back the plaint and the same is still



lying in the concerned learned trial court. Lastly, learned counsel further submits that since the impugned order is perverse, the said order is amenable to the jurisdiction of this Court under Article 227 of the Constitution of India.

04. Despite service of notice, none of the respondents, except respondent no. 7, appeared in the matter.

05. I have given my thoughtful consideration to the facts and circumstances of the case and submission made on behalf of the petitioner. Sections 16 and 17 of the Code read as under:

16. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits—

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the



defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in [India].

17. Suits for immovable property situate within jurisdiction of different Courts.—

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”

06. Bare reading of the provision makes it amply clear that a suit in respect of immovable property lying in jurisdiction of different Courts, can be instituted in any Court within the local limits of whose jurisdiction any portion of the property or one or more property may be situated. The decision of Hon’ble Supreme Court in the case of ***Shivnarayan*** (supra) makes the point clear as a crystal. Paragraphs- 33 and 34 of the said decision read as under:

“33. Sections 16 and 17 CPC are part of the one statutory scheme. Section 16 contains



general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16.

34. From the foregoing discussions, we arrive at the following conclusions with regard to ambit and scope of Section 17 CPC:

34.1. The word “property” occurring in Section 17 although has been used in “singular” but by virtue of Section 13 of the General Clauses Act it may also be read as “plural” i.e. “properties”.

34.2. The expression “any portion of the property” can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

34.3. A suit in respect of immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

34.4. A suit in respect of more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.”

07. In the present case, two properties mentioned in Schedule-A lie within the jurisdiction of the civil court at Patna. So, it is not fathomable that how the learned trial court proceeded in the manner against the specific provision of law in



holding that the court was not having jurisdiction as the suit properties were situated within jurisdiction of different courts.

08. Since the impugned order has been passed against specific provision of law and hence, suffers from perversity, it requires interference by this Court. Therefore, the impugned order dated 7th of February, 2024 passed by the learned Sub-Judge-I, Patna in Title Partition Suit No. 354 of 2023 is set aside. The learned trial court is directed to proceed in the matter in accordance with law since the plaint is still lying in the court concerned as submitted by the learned counsel for the petitioner that it has not been taken back.

09. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-10-2024
Transmission Date	NA

