

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17713 of 2010

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Smt. Manorma Choubey daughter of Late Paras Nath Choubey wife of C.P.D. Narain, resident of Civil Lines near District Judge Kothi Maula Bagh Ara, Police Station - Nawada, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Rohtas at Sasaram.
3. Hare Ram Chobey S/O Late Vishwanath Choubey R/O Vill.- Harihar Dehra, P.S.- Kochas, Distt.- Rohtas
- 4.1. Shanti Devi Widow of Late Rameshwar Choubey Resident of Village- Harihar Dehra, Police Station- Kochas, District- Rohtas.
- 4.2. Anil Kumar Choubey Son of Late Rameshwar Choubey Resident of Village- Harihar Dehra, Police Station- Kochas, District- Rohtas.
- 4.3. Durgawati Devi Daughter of Late Rameshwar Choubey, Wife of Lalan Pandey Resident of Village and P.S.- Chousa, District- Buxar.
- 4.4. Geeta Devi Daughter of Late Rameshwar Choubey Wife of name not known Resident of Village and P.O.- Nagwa, District- Rohtas.
- 4.5. Pinki Devi Daughter of Late Rameshwar Choubey, Wife of Dinesh Pathak Resident of Village- Kumhila, Police Station- Kochas, District- Rohtas.
5. Bisheshwar Choubey S/O Late Vishwanath Choubey R/O Vill.- Harihar Dehra, P.S.- Kochas, Distt.- Rohtas
6. Barmeshwar Choubey S/O Late Rangnath Choubey R/O Vill.- Harihar Dehra, P.S.- Kochas, Distt.- Rohtas
- 7.1. Amit Kumar Choubey, Son of Late Kameshwar Choubey, Resident of Village - Kadipur, P.O. - Sisvad, Police Station - Itarhi, District - Buxar Pin - 812123.
- 7.2. Pratibha Devi Wife of Ram Pravesh Ojha, D/o Late Kameshwar Choubey Resident of Village - Kadipur, P.O. - Sisvad, Police Station - Itarhi, District - Buxar Pin - 812123.
- 7.3. Ravi Prabha Devi Wife of Santosh Kumar Pandey and D/o Late Kameshwar Choubey Resident of Village - Madhubani, P.O. - Bainsi, P.S. - Dhawari, District - Buxar, Pin - 812128.
8. Sidheshwar Choubey S/O Late Rangnath Choubey R/O Vill.- Harihar Dehra, P.S.- Kochas, Distt.- Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Prasad Singh
For the Respondent/s : Mr. Ravi Kumar, A.C. to GP-13

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR



ORAL ORDER

11 25-04-2024 Heard the parties.

2. The following prayer has been made in para-1 of the writ petition :-

“1. that this is an application for issuance of writ in the nature of certiorari setting aside the order dated 16.04.2010 passed by Permanent Lok Adalat, Rohtas at Sasaram in Misc. Case No.8(M)/2007 by which claim of the petitioner for setting aside the award dated 14.02.2002 passed in Case No. 10 of 2001 has been refused.”

3. The present dispute relates to ancestral property of the petitioner and private respondents bearing Khata No.30 and 41 having an area of about 15 Acres situated at Mauja Harihar Dehra Police Station Kochas within the District of Rohtas, the aforesaid land was jointly recorded in the name of common ancestor of the parties namely Late Musafir Choubey. The case of the petitioner is that Late Musafir Choubey has three sons namely Vishwanath choubey, Rangnath Choubey and Paras Nath Choubey (petitioner)-out two of three sons are dead. The sons of Late Vishwanath Choubey are respondent No.3 to 5 and sons of Rangnath Choubey are respondent No.6 to 8.

4. It is submitted by the petitioner that respondent No.3 alongwith his son filed a Title Suit No.10 of 2001



impleading only his two brothers and their sons as a defendant in the aforesaid suit. The suit has been filed for partition of 1/3 shares in the joint properties mentioned above.

5. From perusal of the plaint it appears that after suppressing the vital fact regarding existence of petitioner and other son of Late Musafir Choubey, the present suit has been filed for partition of ancestral property of Late Musafir Choubey. The other legal heirs of the Late Musafir Choubey have not being made party in the suit. It is further submitted that during the pendency of the suit a compromise petition was filed by the parties to the suit and thereafter on request, matter was sent to the Permanent Lok Aadlat vide order dated 10.1.2002, where the case was disposed of in terms of the compromise on 14.2.2002 and accordingly an award has been prepared.

6. It is pertinent to mention here that the entire joint family property has been distributed among themselves by the Respondent Nos.3 to 5 by practicing fraud upon the Court/Lok Adalat after suppressing the fact that they have only 1/3 shares in the entire property and Respondent No.6 to 8 have equal shares of 1/3" each in the same but without imleading the petitioner and others heirs of Late Musafir Choubey as party in



the suit they got an award passed on the basis of compromise which is not sustainable in the eyes of law. The property is still joint as there was no partition between the parties be metes and bounds. When the petitioner when came to know about the illegal act of the respondent No.3 to 5 in the year 2006, he filed a Misc. Case No.8(M) of 2007 in the Permanent Lok Adalat, Rohtas for setting aside award dated 14.2.2002 passed on the basis of compromise. The respondent No.3 to 5 filed its rejoinder objecting the prayer of the petitioner on the ground, interalia that a Title Suit No.192/2005 been has already being filed by the petitioner in which the impugned award has been challenged. Thereafter the Permanent Lok Adalat, Rohtas, vide his impugned order dated 16.4.2010 dismissed the Misc. Case filed by the petitioner on the ground that the same is not maintainable with an observation that if the parties aggrieved by the award, He may go to the higher court.

7. The further case of the petitioner is that he is one of the son of Late Musfafir Choubey and is entitled for 1/3 share in the ancestral property. Respondent No.3 to 5 after suppressing this fact got an award prepared disturbing entire property among themselves therefore the Permanent Lok Adalat have legal obligations to set aside the award passed by suppressing vital



facts as it will amounts to obtain the same by practicing fraud upon the court. Finally the petitioner has filed a Title Suit No.192 of 2005 for partition of his 1/3d share in the joint property but the impugned award will prejudice his claim of partition as the same is barred Under Section 22E of the legal services Authorities Act, 1987.

8. The learned counsel for the respondent No. 3 and 5 have appeared and filed their counter affidavit and they have opposed the prayer made in the writ petition. It is not in dispute that the Award has been obtained by the respondents by not making the petitioner as party. Moreover in the title suit, the compromise petition was filed but subsequently it was withdrawn and it was prayed for referring the same to the Lok Adalat which creates a doubt on the intention of the respondents. The Title Partition suit No. 192 of 2005 is already going on between the parties and the entire subject matter of the present proceeding is subject matter in the title suit.

9. In the interest of justice this application is allowed. The order dated 16.04.2010 passed by the Permanent Lok Adalat is set aside.

10. The Civil suit should have been decided long back but it has been submitted by learned counsel for the parties that



the Court of Sub Judge V, Sasaram is vacant, the District Judge, Sasaram is directed to transfer the suit in another Court so that the same is decided within one year of communication of this order by the parties. Both the parties will cooperate. The Court below will proceed ex.-parte against non-cooperating parties.

11. This order be communicated to District Judge, Sasaram by Fax.

(Sandeep Kumar, J)

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