

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.872 of 2017

Brajendra Bhushan Pandey S/o Late Rameshwar Pandey, Resident of Village - Agarpura, P.O. - Babhangawan, P.S. - Barhara, Dist. - Bhojpur. At present Umanagar, Chandwa More, Ara, P.S. - Ara Nawada, Dist. - Bhojpur.

... .. Appellant/s

Versus

- 1.1. Siyaram Rai Son of Late Samdev Yadav Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 1.2. Sriram Rai, Son of Late Samdev Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 1.3. Ajay Kumar, Son of Late Samdev Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 2.2. Harkesh Rai Son of Late Nirmal Yadav Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 2.3. Hareram Rai Son of Late Nirmal Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 2.4. Sanjeet Kumar Son of Late Nirmal Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 2.5. Dinbandhu Rai Son of Late Nirmal Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
3. Birendra Yadav Son of Late Shalig Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
4. Kauleshwar @ Kamlesh Yadav, Son of Late Shalig Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
5. Yogendra Yadav, Son of Late Shalig Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
6. Hawaldar Yadav, S/o Late Ekram Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
- 7.1. Shidaso Devi Widow of Late Ram Lakhan Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 7.2. Surendra Rai, Son of Late Ram Lakhan Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
- 8.1. Krishna Rai, Son of Late Kishun Dev Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur, PIN - 802163.
- 8.2. Ramesh Rai, Son of Late Kishun Dev Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur, PIN - 802163.
- 8.3. Upendra Rai, Son of Late Kishun Dev Yadav, Resident of Village - Durjan Chak, P.O. - Babhangawan, P.S. - Koilwar, Distt. - Bhojpur, PIN - 802163.
9. Amawas Yadav. Son of Late Rajnath Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
10. Chandeshwar Yadav Son of Late Rajnath Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
11. Shiv Kumar Yadav S/o Bhuneshwar Yadav Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
12. Shanti Devi, D/o Sri Chanchal Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
13. Braj Mohan Rai, Son of Late Kedar Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.



13. Jawahar Kumar Rai, Son of Late Kedar Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
13. Wakil Kumar, Son of Late Kedar Yadav, Resident of Village- Durjan Chak, P.O. Babhangawan, P.S. - Koilwar, Distt. - Bhojpur.
14. Anjani Kumar S/o Late Sukhdev Rai, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
15. Rajendra Yadav S/o Late Ram Govind Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
16. Kanhaiya Yadav Son of Late Mauzi Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
17. Mangal Yadav Son of Late Mauzi Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
18. Krishna Yadav. Son of Late Sawaru Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
19. Nand Kumar Yadav Son of Late Sawaru Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
20. Shiv Kumar Yadav Son of Late Sawaru Ahir, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
21. Shivji Yadav Son of Late Sudarshan Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
22. Shiv Kumar Yadav Son of Late Sudarshan Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
23. Rajesh Yadav Son of Late Sudarshan Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
24. Sudama Yadav S/o Late Srinath Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
25. Rameshwar @ Azad Yadav S/o Sri Chhabila Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
26. Sukh Nandan Yadav Son of Late Bhagwan Yadav Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
27. Dashrath Yadav Son of Late Bhagwan Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
28. Shiv Bachan Yadav S/o Late Kamta Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
29. Subhash Yadav Son of Late Samta Yadav Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
30. Verma Yadav Son of Late Samta Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
31. Shiv Prasad Yadav s/o Late Ganga Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
32. Vikash Yadav S/o Late Satyendra Yadav, Resident of Village - Durshan Chak, P.O. - Babhangawan, P.S. - Koilwar, Dist. - Bhojpur.
33. Aam Janta Gram Panchayat Babhangawan through Mukhiya Gram



Panchayat Babhangawan, P.S. - Barhara, Dist. - Bhojpur.

34. Aam Janta Gram Panchayat Mathurapur through Mukhiya, Gram Panchayat Mathurapur, P.S. - Barhara, Dist. - Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Krishna Rai, Advocate
For the Respondent/s : Mr. Anish Chandra Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

24 03-12-2024

Heard learned counsels for the parties.

2. The present Miscellaneous Appeal has been filed against the order dated 07.07.2017 passed by the learned Sub-Judge-IV, Bhojpur at Ara in Title Suit No. 07 of 2016, whereby the learned trial court has rejected the petition of the appellant for the appointment of receiver and the same is reproduced for kind perusal:

“...A petition dated 26.02.2016 filed on behalf of plaintiff under Section 151 and Order 40 Rule 1 of C.P.C praying therein that your honour will be pleased to appoint a receiver for the protection of the plaintiff and the suit properties.

On the other hand the defendants filed rejoinder dated 11.05.2017 praying therein that the petition for appointment of receiver as alleged in respect of the suit land is not maintainable. The petition of the plaintiff is barred by waiver, estoppel, acquiescence as well as limitation. The objector for defendants are in peaceful possession of the suit land and they have been paying Sikami rent to the rightful owner hence prayer of plaintiff for appointment of receiver be rejected.



Heard and perused the record. From perusal of record and in view of the facts contained in rejoinder, it appears that petition filed by the plaintiff for appointment of receiver is not maintainable. Accordingly, the petition filed by the plaintiff stands rejected...”

3. Considering the submission as made by learned counsels for the parties, the present appeal is admitted for hearing, since, the matter is of the year 2017.

4. The learned counsel for the appellant submitted that when one co-sharer is in possession of the entire property and no share is given to the other then it is a fit case where the Receiver should be appointed and for the same he has relied upon a decision of this Court in the case of ***Smt. Jairani Devi and Ors. Vs. Ram Sanehi Singh and Ors., reported in 1997 (2) P.L.J.R. 1009.*** Learned counsel submitted that in the above said case, earlier judgment of the learned Division Bench of this Court, passed in ***Kamal Chaudhary and another v. Rajendra Chaudhary and others,*** reported as ***A.I.R. 1976 Patna 366*** has been followed, therefore, the learned trial court should have appointed the Receiver in the present case, but, without considering the case and law, the prayer for the appointment of receiver of the appellant has been rejected outrightly by the trial Court.

5. This Court is in view that the Hon'ble Apex



Court has held in case of *Travancore Rayon Ltd. v. Union of India reported in (1969) 3 SCC 868*, that in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action (*see SCC p. 874, para 11*).

6. Furthermore, in the case of *Woolcombers of India Ltd. v. Workers Union reported in (1974) 3 SCC 318*, it was held that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice (*see SCC pp. 320-21, para 5*).

7. Additionally, in the case of *Union of India v. Mohan Lal Capoor* reported in *(1973) 2 SCC 836*, it was held that such reasons must disclose how judicial mind was applied to the subject-matter for a decision. The reason in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two. (*see SCC pp. 853-54, paras 27-28*)

8. Having regard to the facts of the case and the



impugned order of the trial court dated 07.07.2017, I find that the trial court has not assigned any reason for rejecting the application for appointment of receiver. So, considering the submissions made by the learned counsels for the parties as well as judgments of the Hon'ble Apex Court and this court, it is appropriate to set-aside the order of the learned trial Court as the learned trial Court has not applied its judicial mind and erroneously passed the order without giving any ground, reason and explanation for out-rightly rejecting the prayer for appointment of the receiver.

9. Accordingly, the present appeal is allowed and the order dated 07.07.2017 passed by the learned Sub-Judge-IV, Bhojpur at Ara in Title Suit No. 07 of 2016 is hereby set-aside.

10. Further, the trial Court is directed to expedite the disposal of the petition dated 26.02.2016 filed on behalf of the appellant under Section 151 and Order 40 Rule 1 of C.P.C. and pass the reasoned order on merits after hearing the parties in accordance with law.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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