

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.71 of 2017

- 1.1. Bebi Devi Wife of Late Ashok Kumar Pandey, Resident of Village - Pidra, P.S. - Uchkagaon, District - Gopalganj.
- 1.2. Pursotam Kumar Pandey, Son of Late Ashok Kumar Pandey, Resident of Village - Pidra, P.S. - Uchkagaon, District - Gopalganj.
- 1.3. Punit Kumar Pandey, Son of Late Ashok Kumar Pandey, Resident of Village - Pidra, P.S. - Uchkagaon, District - Gopalganj.
- 1.4. Vishal Kumar Pandey, Son of Late Ashok Kumar Pandey (He lives under the guardianship of mother namely Bebi Devi) Resident of Village - Pidra, P.S. - Uchkagaon, District - Gopalganj.

... .. Petitioner/s

Versus

1. Rajkishore Pandey S/o Late Sukdeo Pandey.
2. Rambidya Pandey, S/o Late Sukdeo Pandey.
3. Ramakant Pandey, S/o Late Sukdeo Pandey.
Residents of village- Pirara, Pragana- Kuwari, P.S. Uchakagaun Dist. Gopalganj.
4. Jiut Sah, S/o Shivrath Sah.
5. Birja Mishra, S/o Late Raghunandan Mishra
6. Bramha Mishra, S/o Late Raghunandan Mishra
7. Yogendra Mishra, S/o Late Sakal Deo Mishra.
8. Rabindra Mishra, S/o Late Sakaldeo Mishra.
All Opp. Party no. 4 to 8 are resident of Village- Pirara, Pragana Kuwari, P.S. Uchakagaun, Dist. Gopalganj.
9. Raju Sah, S/o Late Bishunath Sah, R/o Vill. Mirganj Bazar, P.S. Mirganj, Dist. Gopalganj.
10. Basudeo Chaudhary, S/o Late Rakchha Chaudhary.
11. Nandji Yadav, S/o Late Ramekbal Chaudhary.
12. Dayanidhi Yadav, S/o Late Ram Ekbal Chaudhary.
13. Gayanidhi Yadav, S/o Late Ram Ekbal Chaudhary,
Opp. Parties 10 to 13 are resident of village- Baleshara {Bhagwan Tola}, P.S. Uchakagaun, Dist. Gopalganj.
14. Dharmdeo Singh, S/o Late Radhakishun singh, R/o Vill. Rajapur, P.S. Uchakagaun, Dist.- Gopalganj.
15. Ramashankar Chaudhary, S/o Late Parshuram Chaudhary.
16. Arun Chaudhary, S/o Late Parshuram Chaudhary.
17. Jitendra, S/o Late Parshuram Chaudhary.
18. Manoj Chaudhary, S/o Late Siya Ram Chaudhary.
19. Mahanth Chaudhary, S/o Late Siyaram Chaudhary.



20. Ganesh Chaudhary, S/o Late Siyaram Chaudhary,
Opp. Parties No. 15 to 20 are resident of Village- Pirara, P.S. Uchakagaun,
Dist.- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Milind Kumar Mishra, Advocate
Mr. Yogendra Tiwari, Advocate
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 06-03-2024 This Civil Revision application has been filed against the order dated 03.02.2017 passed in Title Suit No. 67 of 2017 by the learned Sub Judge 1, Gopalganj, whereby the Title Suit filed by the plaintiff was declared barred by principle of res judicata on the point of admission itself and has dismissed the suit as not maintainable.

2. The plaintiff-respondent filed title suit for setting aside the judgment and decree dated 19.06.1979 passed in partition suit no. 44 of 1975 by 3rd Additional Subordinate Judge, Gopalganj and also for setting aside judgment and final decree dated 05.08.1988 and also for injunction.

3. The case of the plaintiff-petitioners, in brief, is that one Mahendra Pandey was common ancestor of both plaintiff and defendant 1st set and he died leaving behind his three sons, namely, Ram Prasad Pandey, Muneshwar Pandey and Saryug Pandey, who died issueless, and Ram Prasad Pandey died leaving behind two sons, namely, Sukdeo Pandey and Sahdeo



Pandey. Sukdeo Pandey died leaving behind three sons, namely, Rajkishore Pandey, Ramvidya Pandey and Ramakant Pandey, whereas Sahdeo Pandey died leaving behind his only son, namely, Ashok Kumar Pandey (plaintiff). It is further contended that plaintiff's father was illiterate and simple person, and taking advantage of his simplicity, his brothers Sukdeo Pandey and his sons were mismanaging the entire joint family property and hence the father of the plaintiff had filed a suit for partition bearing Partition Suit No. 44 of 1975 against his brother Sukdeo Pandey and his sons along with other purchasers. It is further contended that the plaintiff, who was minor at that time, was also impleaded as plaintiff no. 2 under the guardianship of his father. Further case of the plaintiff is that at that time, he was minor and his father had no knowledge about the entire joint family property and therefore, entire joint family property was not mentioned in the plaint. After attaining the majority, plaintiff remained outside the country and Partition Suit no. 44 of 1975 filed by the plaintiff was decreed with regard to half share in the joint family property. It is further contended that during final proceedings, the defendants in connivance with the pleader commissioner and several sale deeds executed in favour of the father of the defendants got allotted several plots in their favour



and got the pleader commissioner report collusively confirmed. Plaintiff had also submitted that no execution case was filed and on the basis of forged report, defendants had tried to dispossess the plaintiff's allotted share. It is submitted that the best portion of the land was maliciously and collusively allotted in favour of the defendant no. 1 to 3 without any provision and proper valuation and the plaintiff was deprived from his share and therefore, plaintiff is entitled for partition of his half share and also for allotment and demarcation of the same by appointment of Survey Knowing Commissioner. Therefore the present suit was filed for setting aside the judgment and decree dated 19.06.1979 and also for setting aside the final decree dated 05.08.1988 passed in Partition Suit No. 44 of 1975.

4. Learned counsel for the petitioners submits that the learned lower court has wrongly rejected the suit on the principle of res-judicata and the suit is held to be not maintainable.

5. From perusal of the impugned order, it is evident that the present Title Suit No. 67 of 2017 was filed by the plaintiff/petitioner for setting aside preliminary decree as well as final decree passed in Partition Suit No. 44 of 1975 (which was filed by the petitioner and his father as plaintiff no. 2 and 1



respectively) on the ground that the petitioner was minor at that time. After attaining majority, the present suit was filed.

6. In my view, the proper forum to challenge the final decree is by way of appeal against final decree. No appeal has been preferred against the final decree. Therefore the suit is not maintainable.

7. Considering the aforesaid facts and circumstances of the case, I do not find any irregularity in the impugned judgment and order passed by the lower court.

8. Accordingly, the instant Civil Revision Application stands dismissed.

(Khatim Reza, J)

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