

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.990 of 2017

Satya Narain Singh @ Satyendra Narain Singh , son of Sri Bangali Singh, resident of “Sumitra Sadan” Boring Canal road, PS Sri Krishnapuri, town and district of Patna and presently residing at mohalla Sheikhpura in the house of shri K. N. Singh (Mohani Gali), PS Hawaii Adda, PO Bihar Veterinary College, District Patna.

... .. Appellant/s

Versus

1.Sri Bangali Singh son of Late Sant Lal Singh, resident of “Sumitra Sadan” Boring Canal Road, PS Sri Krishnapuri, town and district of Patna.

2.Ashok Kumar Singh.

3.Shiv Shankar Kumar Singh @ Pawan Kumar.

4.Sanjay Kumar Singh.

5.Shailesh Kumar Singh @ Raju,

6.Dilip Kumar Singh @ Manish Kumar.

7.Rajesh Kumar Singh @ Anish Kumar,

8.Mukesh Kumar Singh @ Raj,

All sons of Sri Bangali Singh and residents of “Sumitra Sadan” Boring Canal Road, PS Sri Krishnapuri, town and district of Patna.

... .. Respondent/s

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Appearance :

For the Appellant/s

:Mr. J.S. Arora, Sr. Adv, Mr.Manoj Kumar, Adv & Mr. Gaurav Pratap, Adv

For the respondent nos. 5, 7 &8:

Mr.Radha Mohan Pandey, Adv & Mr. Chandrashekhar Verma, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 01-12-2020

Heard learned counsel for the parties.

This miscellaneous appeal is directed against the order dated 15.06.2017 passed in Title Suit No. 230 of 2013 passed by



learned Sub-judge-VIII, Patna, by which application of plaintiff-appellant for appointment of receiver was rejected.

Plaintiff-appellant has filed a suit for partition claiming his 1/9th share in the joint family property as detailed in Schedule-I of the plaint. Property detailed in A & C of Schedule-I, stands in the name of Sumitra Devi mother of plaintiff, who died in the year 2003 and after her death same devolved on her legal heirs who are husband (defendant no. 1) and defendant nos. 2 to 6 and the plaintiff being the sons of deceased mother. Property detailed in B of Schedule-I stands in the name of plaintiff and defendant nos. 2 to 6 jointly. It is further stated in the plaint that huge rental is coming from joint family property but petitioner is being deprived of his share in such rental income. Plaintiff-appellant has claimed 1/9th share in property A & C and 1/6th share in property B. According to plaintiff-appellant, suit property as detailed in Schedule-I was purchased by joint family fund after sale of ancestral property of joint family. Plaintiff has separated in mess, residence and business due to differences within family, however, suit property are still joint.

Defendant No. 1 Bangali Singh is father of plaintiff-appellant and is karta of joint family who is looking after and



managing the affairs of joint family and is collecting rent from the tenants of the joint family property buildings. Defendant no. 1 Bangali Singh father of the petitioner has strained relations with plaintiff and as such he is being denied his due share in the joint family property and income received therefrom.

Plaintiff-appellant had filed a money suit being Money Suit No. 68 of 1993 to get share in the rental income which was contested by his father Bangali Singh defendant no. 1, in which he took a plea that plaintiff-appellant is not his eldest son rather his eldest son was Satya Narayan Singh (who is dead) and plaintiff-appellant is his second son and said money suit was dismissed by order dated 15.01.1997 .

A title suit being Title Suit No. 59 of 1996 was filed by defendant no. 1 Bangali Singh father of plaintiff-appellant for declaration that his eldest son Satya Narayan Singh died on 05.07.1979 and plaintiff-appellant Satendra Narayan Singh is not his eldest son but second son and also restraining him from describing him as Satendra Narayan Singh @ Satyanarayan Singh, however, same was dismissed by order dated 19.07.2012, holding that *'taking into consideration all the finding which are based on documentary and oral evidence, I am of the view that plaintiff has not been able to prove that Satya Narayan Singh*



was his eldest son who died in 1979 and defendant no. 1 is his second son. Contrarily there are evidence which proves that defendant no. 1 Satya Narayan Singh @ Satendra Narayan Singh is the same and one person and is the eldest son of the plaintiff'.

Written statement was filed on behalf of Bangali Singh defendant no. 1, verified on 01.08.2014 in the premises of Civil Court at Patna in which it has been stated that plaintiff Satendra Narayan Singh is his second son and his first son Satya Narayan Singh died on 05.07.1979 due to Snake bite. Defendant No. 1 from self earning and saving has purchased several *benami* properties either in the name of his wife or sons. Property detailed in Schedule-D/1, D/2, D/3 of W.S., are *benami* transactions and have been purchased on 18.08.1972 and 24.06.1977 by defendant no. 1 for his benefit and use and consideration was paid by him from his own earning and saving. His wife was housewife and his sons were minor and they had no earning of their own to purchase said properties and as such plaintiff or other defendants have no right to claim partition in the self acquired property of defendant no. 1. The properties are mutated in his name and rent is also collected by him in which plaintiff or other defendants have no share. There is no unity of



title and possession over the properties and plaintiff has become separate in mess and business from defendant no. 1 since 1991. Neither plaintiff nor defendant no. 2 to 8 have any share in the said property and he is exclusive owner of the suit property.

Against the judgment and decree dated 19.07.2012 passed in Title Suit No. 59 of 1996 defendant no. 1 has filed Title Appeal No. 56 of 2012 which is pending before the Additional District Judge, Patna.

A counter claim has also been made in written statement for a declaration that property mentioned in Schedule-D/1, D/2 and D/3 of W.S., belongs to defendant no. 1 and he is the sole and rightful owner of the said property and gift deed dated 31.01.1990 is forged and fabricated document. Defendant no. 7 and 8 in their separate written statement have supported the case of defendant no. 1.

During pendency of suit plaintiff filed a petition for appointment of receiver, as huge rental income is being usurped by the defendant no. 1 and even if the plaintiff succeeds in the suit, he will be put to a great loss, if the accounts of the rental income is not furnished, and 1/9th rent shall be given to plaintiff-appellant or kept in the custody of court during pendency of suit. However, same was dismissed by the trial



court against which plaintiff has filed this miscellaneous appeal.

Notices were issued to respondents pursuant to which defendant nos. 5, 7 and 8 have appeared and a counter affidavit has been filed on behalf of defendant nos. 5, 7 and 8 namely Shailesh Kumar Singh @ Raju, Rajesh Kumar Singh @ Anish Kumar and Mukesh Kumar Singh @ Raj, which has been sworn on 15.07.2019 in which they have stated that suit property was the self acquired property of defendant no. 1 Bangali Singh, who bequeathed the same through registered Will dated 03.03.2010 in favour of defendant no. 5, 7 and 8 and they have filed an application for grant of letters of administration being Case No. LA33 of 2017, which has been converted in Title Suit No. 49 of 2018, which is pending for final adjudication and plaintiff-appellant has already appeared in said case.

Plaintiff-appellant has also brought on record through a supplementary affidavit, a petition filed by defendant no. 5, 7 and 8 before the trial court in which date of death of defendant no. 1 Bangali Singh and executor of the Will dated 03.03.2010 has been stated to be 30.03.2013 i.e. prior to filing of the title suit which was filed on 08.04.2013.

In their application in the court of District Judge, Patna, for grant of Letter of Administration Case No. 33 of 2017 under



Section 278 of Indian succession Act, 1925, which has been filed for grant of Letter of Administration of Will dated 03.03.2010 executed by late Bangali Singh in favour of defendant nos. 5, 7 and 8 in which date of death of Bangali Singh has been stated to be 30.03.2013 i.e. prior to filing of the suit, therefore, it is quite surprising that how a written statement was filed on behalf of defendant no. 1 Bangali Singh which was sworn on 01.08.2013 in the premises of Patna Civil Court, as such suit as well as petition for appointment of Receiver filed by plaintiff appellant was contested by a dead person. Accordingly, impugned order dated 15.06.2017 passed in Title Suit No. 230 of 2013 by learned Sub-judge-VIII, Patna, is void and *non est* in the eye of law and is accordingly, set aside.

Defendant no. 5, 7 and 8 also in their counter affidavit have stated that suit property was self acquired property of late Bangali Singh and accordingly, he bequeathed the properties by a registered Will dated 03.03.2010 in favour of defendant no. 5, 7 and 8 for which and an application for grant of Letters of Administration, is pending in the Civil Court and they are in possession of suit property and also realizing the rents.

After death of Bangali Singh the nature of title partition suit has completely changed and plaintiff-appellant claim the



suit property also by way of inheritance/succession even if suit property is held to be self acquired property of late Bangali Singh whereas defendant no. 5, 7 and 8 claim suit property through a registered Will executed by late Bangali Singh. Defendant no. 5, 7 and 8 also claim to be in possession of suit property and receiving rental after death of defendant no. 1 Bangali Singh, being successors of suit property.

As this Court has held impugned order to be void and *non est* in the eye of law, it shall be open for the plaintiff-appellant to file a fresh application for appointment of Receiver, which shall be considered by the trial court in accordance with law after hearing all the parties.

In view of settled proposition of law, District Judge, Patna, is directed to transfer both the cases before the same Court in which title partition suit as well as title suit arising out of Will is adjudicated side by side.

The Miscellaneous Appeal is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2020
Transmission Date	NA

