

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1720 of 2019

- 1.1. Sri Raj Kumar Singh Son of Sri Surender Singh, Resident of Siddharth Puri Colony, Road No. 1, Manpur, P.O. Buniyadganj, P.S. Mofassil, town and District - Gaya.
- 1.2. Sri Tarun Kumar Singh Son of Ramesh Prasad Singh, Resident of Siddharth Puri Colony, Road No. 1, Manpur, P.O. Buniyadganj, P.S. Mofassil, town and District - Gaya.

... .. Petitioner/s

Versus

- 1.1. Rama Mukharjee Widow of Late Subhash Mukharjee, Resident of 71, Maharaja Nand Kumar Road (South) P.O. and P.S. Warangar, District North 24 Pragana, Kolkata - 700036.
- 1.2. Samyabrata Mukharjee Son of Late Subhash Mukharjee, Resident of 71, Maharaja Nand Kumar Road (South) P.O. and P.S. Warangar, District North 24 Pragana, Kolkata - 700036.
2. Saurabh Mukharjee Son of Sushil Kumar Mukharjee Resident of Mohalla 71/2 Maharaja Nand Kumar Road (South), P.S. Bara Nagar, District- North 24 Pargana, Kolkata (West Bengal) PIN- 700036.
3. Soumitra Mukharjee Daughter of Late Sunil Kumar Mukharjee Resident of Mohalla 12/19/1 Shashi Bhushan Garden Lane, P.S. Bara Nagar, Kolkata, District- North 24 Pargana, West Bengal, PIN- 700036.
4. Sudheshna Mukharjee Daughter of Late Sunil Kumar Mukharjee Resident of Mohalla 12/19/1 Shashi Bhushan Garden Lane, P.S. Bara Nagar, Kolkata, District- North 24 Pargana, West Bengal, PIN- 700036.
5. Sudarshan Banarjee Son of Late Sunil Kumar Mukharjee Resident of Mohalla 12/19/1 Shashi Bhushan Garden Lane, P.S. Bara Nagar, Kolkata, District- North 24 Pargana, West Bengal, PIN- 700036.
6. Binod Sharma Son of Sri Brij Bihari Sharma Resident of Mohalla- New Godown Maharani Road, Kumar Colony, P.O. R.S. Gaya, P.S.- Kotwali, District- Gaya.
7. Sri Niranjan Kumar Son of Sri Surendra Narain Singh Resident of Mohalla Lakhi Bagh, Ratan Alumuniya Lane, Manpur, P.O. Buniyadganj, P.S.- Mofassil, District- Gaya.
8. Sri Sanjay Kumar Son of Late Akhileshwar Prasad Singh Resident of Village and P.O.- Tungi Hissua, District- Nawada.
9. Guddu Kumar Son of Sri Mathura Singh Resident of Village and P.O Pale, P.S.- Wazirganj, District- Gaya.
10. Sri Harendra Singh Son of Sri Mathura Singh Resident of Village and P.O.- Pale, P.S.- Wazirganj, District- Gaya.
11. Vishal Kumar Son of Sri Naresh Chandra Resident of Lakhibagh, Bulla Shahid, P.S. Mofassil, District- Gaya.
12. Rajeev Nandan Son of Sri Chandradeo Sharma Resident of Mohalla- Lakhibagh, Bulia Shahid, P.S.- Mofassil, District- Gaya.



13. Sri Vikash Kumar Son of Sri Arbind Singh Resident of Village and P.O. Maksudpur, P.S.- Khizersarai, District- Gaya.
14. Sri Hare Ram Son of Late Janardan Prasad Singh Resident of Mohalla Lakhibag, Bulia Shahid, P.S.- Mofassil, District- Gaya.
15. Sri Amit Kumar Son of Sri Braj Bhushan Singh Resident of Village and P.O. Pale, P.S.- Wazirganj, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Anjani Kumar, Advocate Mr. Abhay Nath, Advocate Ms. Kri. Shreya
For the Respondent/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Ms. Shashi Priya, Advocate
For the Respondent Nos. 2 & 3	:	Mr. P.N. Sahi, Sr. Advocate Mr. Manish Kumar No. 2, Advocate

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT

Date : 21 -11-2025

Heard learned counsel for both the parties at length.

2. The present petition has been filed for the following reliefs:-

“1) That the present petition is being filed for setting aside the order dated 16.10.2019 passed in Partition Suit No. 42 of 2018/Partition Suit No. 588 of 2013 by learned Sub Judge XIV, Gaya whereby the learned court below in a partition suit filed for partitioning the property of father without making the daughters party failed to decide the intervenor petition of one of the daughters(who is petitioner here) first



proceeded to permit the subsequent prayer of withdrawal of suit which was filed with mala fide intention to deprive the daughters of their undisputed due share and thereby tried to prevent consideration of the petitioner-daughter's prayer for transposition as plaintiff in the suit as in a partition suit everybody is plaintiff and the position of parties as plaintiff and defendant is easily interchangeable in partition suit particularly when the suit has made some progress and the daughter was also seeking partition like the plaintiff and was entitled to be transposed as plaintiff after impleadment which partition was filed earlier than withdrawal petition and was required to be adjudicated first. “

3. It is submitted by learned counsel for the intervenors/petitioners that Partition Suit No. 42 of 2018/588 of 2013 was filed by the co-sharer before Sub-Judge, XIV, Gaya but in that Partition Suit, the petitioners/intervenors were not impleaded as party despite being co-sharers with *mala fide* intention and subsequently a petition which was filed by the intervenors/petitioners



under Order 1, Rule 10 C.P.C was not decided and without adjudicating the aforesaid petition filed under Order 1, Rule 10 C.P.C, a petition filed by the plaintiff/petitioner under Order 23, Rule 1 of the C.P.C for withdrawal of the entire suit, was allowed and the case was permitted to be withdrawn by the learned Sub-Judge, XIV, Gaya which is not sustainable in the eyes of law.

4. He further submits that learned Court below should have first decide the intervenor petition which was filed under Order 1, Rule 10 and then the Court should have disposed of the petition filed by the plaintiff/petitioner under Order 23, Rule 1 of the C.P.C. The Court, therefore, has committed an error in firstly deciding the petition filed on behalf of the plaintiff/petitioner under Order 23, Rule 1 of the C.P.C.

5. Learned counsel appearing on behalf of the defendants/respondents has submitted that intervenors/petitioners cannot compel the plaintiff/petitioner to contest the suit without his desire.

6. After hearing both the parties, it appears that said partition suit was withdrawn on the petition filed on



behalf of the plaintiff/petitioner under Order 23, Rule 1 and the contesting defendants(co-sharers) had no objection of the withdrawal of the plaintiff's petition. In the impugned order, it is held by the Court below that the plaintiff/petitioner was physically present before In-charge, Court and stated that he is not willing to pursue the suit and wants to withdraw the suit. He has made a signature before the In-charge, Court in the margin of the suit and given affidavit along with the petition before the Court that he is willing to withdraw the suit unconditionally and the content of his withdrawal petition is true in his knowledge. The Court below has also held that content of withdrawal petition was duly supported by the affidavit dated 03.07.2019 which was available on the record. Moreover, the plaintiff/petitioner is master of the suit and if he is not willing to pursue the suit, the Court cannot compel him to contest his suit. Hence, the Court below, after considering the aforesaid facts, has rightly allowed the withdrawal petition filed on behalf of the plaintiff/petitioner and in light of acceptance and order on withdrawal petition, the learned trial Court dismissed the petition of the intervenor/petitioner



filed under Order 1, Rule 10 as having become infructuous in the light of the aforesaid withdrawal.

7. In Cr.P.C. also, it is nowhere provided that a petition of the intervenor/petitioner under Order 1, Rule 10 will be decided first and then withdrawal petition under Order 23, Rule 1, filed on behalf of the plaintiff/petitioner will be disposed of. So far as the present case is concerned, no right was accrued to the intervenors/petitioners till 16.10.2019 and prior to that the case was withdrawn by the plaintiff/petitioner.

8. Accordingly, I do not find any illegality and impropriety in the impugned order. Hence, the order dated 16.10.2019 passed by learned Sub-Judge-XIV, Gaya in Partition Suit No. 42 of 2018/588 of 2013 is hereby upheld.

9. Civil Miscellaneous No. 1720 of 2019 stands dismissed accordingly.

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	14/10/2025
Uploading Date	21/11/2025
Transmission Date	N/A

