

In The Court of Sub-Judge, Kahalgaon (Bhagalpur)

Presiding officer :- Amit Kumar Sharma

Title Suit No - 145/2019

Kanhaiya Tiwari & Others. Vs Anil Kumar Tiwari

Dated: 11.10.2022

Order

Attendances have been filed on behalf of the parties. This case is fixed for order on petition dated 09-11-2020 filed under Order VII Rule 11 by the sole defendant and its rejoinder dated 06-02-2021, filed on behalf of plaintiff.

It has been stated that on behalf of petitioner/defendant that plaintiff has no cause of action to file this suit because plaintiff has mentioned in para 37 of plaint that the cause of action arose on 08.05.2019 when the learned D.C.L.R. Kahalgaon passed the order in favour of defendants in Mutation Appeal No. 49/2018-19 thereby the partition deed dated 23.06.2018/25.06.2018 was not believed. In the course of hearing it was submitted on behalf of defendant that Order of Learned D.C.L.R. has already been set aside by the court of A.D.M. Bhagalpur and photocopy of that order dated 30.12.2020 passed in Mutation Revision Case No. 63/2019-2020 has already been filed. Some facts regarding merit of the case were also stated on behalf of defendants.

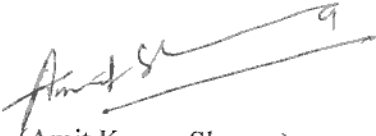
It has been stated on behalf of plaintiff by way of rejoinder and in course of hearing that the petition has been filed just to linger the case and hearing of the injunction petition filed in this case. It has been further mentioned that plaintiff has filed this case on the basis of partition deed dated 23.06.2018/25.06.2018 , plaintiff is seeking validation of his right on the basis of aforesaid partition deed alternatively plaintiff has asked for partition of the suit land. Therefore the petition of the defendant is misconceived and same is liable to be rejected.

After hearing both the parties and perusal of the record this court finds that this petition has been filed only on the technical ground after ignoring the whole matter in issue. It is a settled law that cause of action is a bundle of facts which are required to be proved by the plaintiff. On plain reading of the plaint this court finds

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that the plaintiff has filed this suit for validation of the alleged partition deed and alternatively the plaintiff has also sought partition of the suit land. In present facts and circumstances the cause of action arises when the defendant question the partition deed and also when defendant refused to partition the suit land. It is therefore crystal clear that the petition filed on behalf of the defendant has no merit and it is a misconceived petition therefore it is hereby dismissed on a cost of Rs. 300/- payable to plaintiff with direction to remain cautious in future in filing such type of frivolous petition .

The case is fixed on 11.01.2023 for further proceeding.


(Amit Kumar Sharma)
Sub-Judge, Kahalgaon