

In the Successor Court of Civil Judge (Sr. Div.)-II, Kahalgaon
Present: - (Md Tasneem Kausar)

Title Suit No.- 145 of 2019

Kanhaiya Tiwari & ors.....(Plaintiffs)

VERSUS

Anil kr. Tiwari & ors.....(Defendants)

ORDER

26/06/25 Attendance has been filed on behalf of the plaintiff and defendant. Today, this case is fixed for necessary order on the petition U/O XIV, Rule 2(2) read with section 151 of C.P.C dt. 29.08.2023 filed on behalf of the defendant and its rejoinder dt. 20.09.2024 filed on behalf of the plaintiffs.

Already heard. During hearing, learned counsel on behalf of defendant under O XIV, Rule 2(2) read with section 151 of C.P.C submitted before the court that, all the plaintiffs and the defendant are the sons of Late Jagarnath Tiwari. That the plaintiffs suit mainly based on amicable partition deed dt.23.06.2018/25.06.2018 and in view of the same the plaintiffs have sought for the relief (a) that the partition deed dated 23.06.2018/25.06.2018 is correct and legal and alternatively (b) that a preliminary decree of partition to the extent of plaintiffs share in the suit property be passed in favour of the plaintiffs. The question of partition deed dated 23.06.2018/25.06.2018 pending in your honour's court is not legal, rather the same has been created fraudulently to injured the interest of only one brother namely, Anil Kumar Tiwari (defendant). He further said that, oral partition must be registered otherwise it will be no use. Moreover, Saraswati Devi died in the year 2015 then how the Saraswati Devi's property i.e. Khata No. 657, Plot 2149 Area 1.66 dec. had partitioned in the year 2018, Saraswati Devi had three sons and four daughters. That Ashok Tiwari S/o-Late Tripathi Narayan Tiwari who is not the descendant of Tiwari's genealogical table, then how the property i.e. 0.12 dec of plot

No.2874/4419 under Khata 59 came in the so-called partition deed. That from the perusal of the said fraudulently prepared partition deed, it would be clear that several illegalities and fraud were committed by the plaintiffs. That the application of order XIV, R.2(2) of the C.P.C applies so that the Ld. Court may disposed of the case only on one issue first if that issue relates to (a) The jurisdiction of the court, or(b) A bar to the suit created by any law for the time being in force. That the term "fraud" comes in the purview of "a bar to the suit created by any law." That a Probate Case 03/2022 is pending for disposal in the court of Ld. A.D.J-V, Bhagalpur. That from the perusal of the so-called partition deed dated 23.06.2018/25.06.2018 your honour will find several illegalities in the said partition deed. The genealogical table has been wrongly prepared. That the defendant also filed a F.I.R bearing no. 123 / 20, which is pending in the competent court. He further submitted before the court that, the plaintiffs have not filed the original copy of so-called partition deed dt.23.06.2018/25.06.2018. And lastly has prayed to postpone the settlement of the other issues until after those issues has been determined, and may deal with the suit in accordance with the decision of suit.

On the other hand, the learned counsel on behalf of plaintiffs appeared before the court and vehemently opposed it and submitted that the petition dt. 29.08.2023 under Order 14 Rule 2(2) read with section 151 of C.P.C is not maintainable either in law or on fact. That the petition impugned is the result of misconception of law otherwise this sort of petition would not have been filed. That the word fraud coined from the side of defendant will prove or not prove when the trial goes on and said partition deed of having been declared it a correct and legal document and the defendants alleged to be a fraudulent document and these things will be decided when the matter goes in trial. He further said that, the preliminary issues decided by looking into the materials on record prima facie and this is not a case in which prima facie it can be said that any document is a fraudulent document or not. That this defendant Anil Kumar Tiwary is the signatory on the said partition deed and on bare perusal of his signature on the said partition deed is matched with his admitted signature on record on Wakalatnama the learned court will find that the defendant is a great liar. That it is denied that partition deed dated 23.06.2018/25.06.2018 is fraudulent document. This document was acted upon, Mutation was ordered on the basis of the said partition deed and that remained till Bihar Land Tribunal,

Patna. The property of Saraswati Devi was already decided and defendant cannot be allowed to usurp the property of Saraswati Devi and also submitted before the court that, Ashok Tiwari is not a necessary party to the suit. He also submitted that, the word fraud come within the preview of a bar to the suit created by any law and Probate case no.- 03/2022 is pending in the court of A.D.J.- 5th Bhagalpur has been stayed by the Hon'ble Patna High Court. That the defendant Anil Kumar Tiwari is signatory to the said partition deed and he has filed a bogus F.I.R and no fraud has been done by these plaintiffs and they are ready to go into the trial. And lastly has prayed to reject the impugned petition of the defendant dated 29.08.2023.

Heard both sides and perused the case record. On perusal, it transpires that instant suit is pending for the appearance of the intervenor defendants. In the meantime, instant petition has been filed by the defendant to decide preliminary issue under Order 14 Rule 2(2) of C.P.C.

Now let us have a look at the Order XIV Rule 2(2) of Civil Procedure Code.

Order 14 Rule 2 (2) of C.P.C deals with,

“a court to decide a preliminary issue of law before other issues, if it relates to the court’s jurisdiction or a bar to the suit created by law”.

From the perusal of the record, the petition dated 29.08.23 doesn’t come under the purview of order 14 Rule 2(2) of C.P.C. The petition of the defendant is neither related to the jurisdiction of the court nor related to a bar to the suit created by any law. The partition deed dated 23.06.18/25.06.18 will be consider during the course of trial.

After considering the above facts and circumstances this court finds that, the statements of the plaintiffs are true. Therefore, it is in the interest of justice to reject the petition of the defendant.

Hence, petition dated 29.08.2023 filed on behalf of the defendant is hereby rejected and its rejoinder dated 20.09.2024 of the plaintiffs is being disposed off.

Put up on 22.07.2025 for further proceeding.

(MD TASNEEM KAUSAR)
Succ.Civil Judge (Sr. Div.) – II,
Kahalgaon