

In the Court of Civil Judge (Sr. Div)-I, Kahalgaon, Bhagalpur
Present:- Akhilesh Kumar

T.S. 208/ 2022

Most. Chandrakala Devi & Others.....Plaintiffs
Vs
Most. Foto Devi & Others.....Defendants

Order

Dated:- 01-08-2025

Both sides have represented through their Ld. Counsels. Case called out. On call both sides have appeared. Perused the record. This case is fixed for order on petition filed by defendant No. 11 to 13 U/O 7 Rule 11(d) read with section 151 of the Code of Civil Procedure. On 10-11-2023, the rejoinder of the same has been filed by the plaintiffs on 08-05-2024. In instant petition the plaintiff has mentioned detail accounts of facts in support of his petition. In short the main ground for filing this petition is that, earlier Title Suit No. 34/2002 was filed by one Anant Jha who was husband of plaintiff Most. Chandrakala Devi. That case was withdrawn by the plaintiffs. It has been submitted that, this suit is not maintainable because Title suit No. 34/2002 had been filed for declaration of right title, interest over the land in question but this case has filed for partition with respect for same land. It has been submitted that, there are several other grounds for rejection of the plaint.

In rejoinder the plaintiffs have submitted that, earlier Title Suit 34/2002 has been filed but the same was withdrawn with liberty to file a fresh suit. The plaintiffs have filed this suit for partition. It has been submitted that the plaintiffs have every right to seek relief of their share in ancestral property at any period of time.

Both sides have been heard. Perused the record of title suit No. 34/2002. It appears that, plaintiffs have filed that case for declaration that there was an oral amicable separation by way of family settlement. In the written statement filed in Title suit No. 34/2002 the defendants have also accepted that fact that there was an oral and amicable family partition taken place in

Continue

In the Court of Civil Judge (Sr. Div)-I, Kahalgaon, Bhagalpur
Present:- Akhilesh Kumar

T.S. 208/ 2022

Continued
01-08-2025

1970 and the shares were separated. It appears that the family partition is an acceptable fact in Title Suit No. 34/2002.

this suit has been filed after withdrawn of title suit No. 34/2002 with liberty to file a fresh suit. It means the plaintiff is liberty to file a fresh suit for the same cause of action which was arose in previous suit. It appears that, after withdrawn the legal heirs of plaintiff of title suit No. 34/2002 have filed a new suit for another cause of action. In this suit they seek partition. However, the previous suit was not decided on merit. The facts mentioned in the plaint and written statement of title suit No. 34/2002 are not supposed to be proved correct. If the plaintiff has filed this suit for partition it should be considered as a new suit. The fact mentioned in title suit No. 34/2002 are not binding upon the plaintiffs but they may be considered under principals of estoppel. Under the above facts and circumstances, I find that the plaintiffs have valid grounds and cause of actions to file this suit.

Therefore, the petition filed by defendant No. 11 to 13 on 10-11-2023 U/O 7 Rule 11(d) read with section 151 of the Code of civil procedure is not worth considerable and hear by dismissed without cost. The petition discussed above and rejoinders thereof are accordingly disposed off.

On 09-09-2025 for hearing on injunction petition filed by plaintiffs U/O 39 Rule 01 & 02 read with section 151 of the Code of Civil Procedure dated 28-04-2023.

Dictated



(Akhilesh Kumar)
Civil Judge(Sr. Div.)-I
Kahalgaon, Bhagalpur