

IN THE COURT OF SUB JUDGE I, JAGDISHPUR, BHOJPUR AT ARA

Title Suit Case No. 214/2021

CIS No.: 214/2021

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with
28.08.2023	<p>Both sides and intervenor have filed their hazri and intervenor filed his new Vakalatnama along with the photo copy of documents. Defendants have filed a rejoinder of the applicant's petition dated 21.08.2023. Case called out. On call Ld. Advocate of both sides as well as intervenor appeared.</p> <p>Heard Ld. Advocate of both side and intervenor on petition dated 13.06.2022 filed under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure by applicant and rejoinder thereon dated 13.07.2022 filed by defendant no. 1 as well as plaintiff.</p> <p>Ld. Advocate of intervenor submitted that applicants Bhagrasni Kunwar wife of late Shiv Govind Yadav and Laljhara Kunwar wife of late Bhuti Yadav both are daughters of late Gajadhar Ahir resident of village Karja Post Umraonganj P.S. Bihiya, District Bhojpur. Ld. Advocate of applicants submitted that both applicants are daughter of Gajadhar Ahir and Dalwati Kunwar was their mother. Ld. Advocate of applicants submitted that land situated in village Bihiya Thana no. 147 bearing khata no. 272 plot no. 1091,1092 and 1093/2581 recorded in the name of Dalwati Kunwar wife of Gajadhar Ahir in the khatiyar. Further Ld. Advocate of applicant submitted that applicants had given their land to the Bhudhan Yadav for agricultural work but now Budhan Yadav's intention has changed and he has stopped giving their share therefore applicants have filed the case u/s 144 of the Code of Criminal Procedure in the Court of S.D.O., Jagdishpur bearing case no. 201/2020 in which Budhan Yadav appeared and report has been called for from the S.H.O., Bihiya and Circle Officer, Bihiya and both the Officers reported that applicants are daughter of Gajadhar Ahir whose mother's name is Dalwati Kunwar. Thereafter the case u/s 144 Cr.P.C. was dismissed saying that the determination of share can not be decided from this Court. Further Ld. Advocate of intervenor submitted that in the light of order dated 07.12.2020 passed by the S.D.O., Jagdishpur applicants have filed a case bearing no. 280/2021 against Budhan Yadav and others in the Court of Sub Judge, Jagdishpur, Bhojpur in which order for maintaining the status quo has been passed against defendants vide order dated 01.12.2021 and Budhan Ahir has filed a case through Ramawati Devi in the Court of Sub Judge, Jagdishpur, Bhojpur bearing no. 214/2021 in which he has not impleaded to the applicants as a party and Budhan Yadav submitted in his case that Gajadhar Ahir and Dalwati Kunwar were the issue less and he has not mentioned any fact which reported in the case no. 201/2020 u/s 144 Cr.P.C. whereas applicants are necessary party. Further Ld. Advocate of applicants submitted that Budhan Ahir has appeared in the case of 280/2021 and filed his written statement in which he has</p>	

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Cont. 28.08.2023	<p>written the name of Dalwati Kunwar as a Daulato whereas the name of wife of Gajadhar Ahir has been mentioned Dalwati in the khatian. Further Ld. Advocate of applicant submitted that khata no. 271 and 272 is in the possession of applicants as per their share which opposed by Budhan Yadav and applicants have also filed an application for measurement of the land of khata no. 271 before the Circle Officer, Bihiya in which Budhan Yadav opposed and he has given information to the Circle Officer that one case bearing 214/2021 is pending in the Court of Sub Judge, Jagdishpur in which order for maintaining the status quo has been passed vide order dated 17.01.2022 thereafter applicants got the knowledge about this case and filed their petition. Further Ld. Advocate of applicants submitted that applicants are necessary party in this case and prayed for adding their name as party in this case.</p> <p>Plaintiff has opposed the said petition through his rejoinder dated 13.07.2022 and submitted that the said petition is not maintainable in the eye of law and barred by law of Limitation. Ld. Advocate of plaintiff submitted that applicants are not coming from the branch of Piyar. Ld. Advocate of plaintiff submitted that disputed land is purchased land of Raghu Nandan Aahir from the joint family fund therefore, the new survey khatian was prepared jointly. Further Ld. Advocate of plaintiff submitted that intervenor applicants do not have knowledge that Most. Dalwanti Kunwar @ Daulato Kunwar had already executed the Ladavi on dated 17.12.1991 in the favour of Budhan Ahir in which she had clearly accepted that after the death of her husband Gajadhar Ahir, entire property will be transferred to Budhan Ahir. Further plaintiff denied the facts of petition and submitted that intervenor defendants have filed a case bearing no. 201/2020 u/s 144 Cr.P.C. in the Court of S.D.O. which has been dismissed without proceeding and Circle Officer, Bihiya and S.H.O., Bihiya have never given a report saying possession of intervenor over the disputed land and one Ajay Choubey had filed a case u/s 145 Cr.P.C. bering No. 02/2021 on the instigation of intervenor and after knowing about the false fact he withdraw his case. Further Ld. Advocate of plaintiff submitted that information about this case has already been given to the intervenor applicants in the mutation case no. 704/2021-22 on dated 07.09.2021 and thereafter intervenor applicants filed a false case u/s 145 Cr.P.C. through Ajay Choubey thereafter filed Title Suit Case no. 280/2021 to establish the fact relating to their identity therefore, said petition is based on the false fact and prayed for dismissing the said petition.</p> <p>Defendant no. 1 has also opposed the said petition through his rejoinder dated 13.07.2022 and this defendant also took the same plea as mentioned by the plaintiff in his petition and prayed for dismissing the said petition. Ld. Advocate of defendant no. 2 to 6</p>	
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<p>Cont. 28.08.2023</p>	<p>also opposed the said petition orally.</p> <p>Heard and perused the case record. From the perusal of case record, it transpires that plaintiffs have filed this suit for the partition of suit land saying that Viveki @ Bideshi was the common ancestor of both sides who had three sons Raghunandan Ahir, Rama Ahir and Piyar Ahir and plaintiffs are coming from the branch of Rama Ahir and present defendants are coming from the branch of Raghu Nandan Ahir and Piyar Ahir. Genealogy given at the foot of the plaint shows that Piyar Ahir had two sons Bhuneshwar Ahir and Gajadhar Ahir and Gajadhar Ahir died issue less whereas intervenor applicants submitted in their petition that Daulato Kunwar have two daughters namely Bhagrasni Kunwar and Lal Jharo Kunwar. Written statement of defendant no. 2 to 6 also mentioned the said fact in para no. 13 of their written statement that Gajadhar Ahir has two daughters Lal Jharo Kunwar and Bhagrsni Kunwar. Applicants have also filed photo copy of several document including report of S.H.O., Bihiya Umeshwar Singh dated 03.08.2020 and report of Circle Officer, Bihiya which shows that intervenor applicants are the daughter of Daulato Kunwar. Intervenor applicants also filed photo copy of Pan Card, Adhar Card and certificate issued by Mukhia, Gram Panchayat, Karja and Sarpanch, Gram Kathary dated 19.03.2023 shows that both applicants are daughter of Gajadhar Ahir. From the perusal of case record, it transpires that no issue has been settled as yet in this case and case is running for the compromise talk and mean while applicants have filed the said petition.</p> <p>Therefore, in view of the above discussion this Court is of opinion that this is a case of partition of joint hindu properties and both applicants are claiming that they are the daughter of Gajadhar Ahir and coming from the joint family of plaintiff and defendants which also supported by defendant no. 2 to 6 whereas plaintiff's claims that Gajadhar Ahir died issue less and these facts may be determined only after getting the evidence from both sides. Hence, for the interest of justice petition of applicants is allowed. Applicants are directed to file their written statement.</p> <p>Put up on 11/09/2023 for A.D.R. Dictated</p> <p>Sub Judge-I, Jagdishpur, Bhojpur.</p>	
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