

IN THE COURT OF SUB-JUDGE-I, PATNA CITY

Title Partition Suit No. 285/2017

015-122/17

Rohit Kumar Plaintiff

Vs.

Atul Krishna & ors.....Defendants

Order

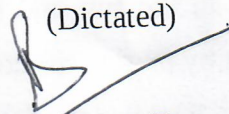
05.12.2022

Attendance is filed on behalf of the plaintiff and defendant no. 1 and 2. A petition dated 13.05.2022 is filed on behalf of defendant no. 1 and 2 namely Atul Krishna and Ajay Krishna both sons of late Arun Kumar u/s 47 CPC. The learned advocate on behalf of the defendant no. 1 and 2 has stated that in the present suit, judgment is passed on 28.05.2019 on contest without cost and preliminary decree is prepared on 12.06.2019. It is further submitted that proforma defendant no. 3 and plaintiff are entitled for half share in the suit property jointly. It is further submitted that plaintiff has falsely and illegally has filed this present Title Partition Suit, with respect properties of defendant no.1 and 2 and further plaintiff has illegally filed this suit against the defendant no. 1 and 2 in the suit and has fraudulently and illegally snatched the order from the learned court by putting the court into wrong box. It is also submitted that defendant no. 1 and 2 have no knowledge of the suit and no personal summon was served upon them. It is also submitted that the plaintiff has filed a petition under order 26 rule 10A CPC for appointment of Survey Knowing Advocate Commissioner and Commissioner's Fees has also been deposited but the suit property is not a joint property and the suit property is the property of defendant no. 1 and 2 only and they have got right, title and possession over the said property on the basis of gift deed. Accordingly, it is prayed on behalf of defendant no. 1 and 2 that all questions arising between the parties to the suit in which decree is passed may be determined by the court executing the decree and not by a separate suit as per section 47 CPC.

A rejoinder dt. 19.09.2022 is filed on behalf of the plaintiff stating that the defendant no. 1 and 2 petition is neither maintainable in law or not nor of facts. It is also submitted that defendant had full knowledge of suit but they did not appear in this case due to malafide intention. It is also submitted that defendant no. 1 and 2 after appearance, never filed WS and left pairvi. Accordingly they were debarred from filing WS and ultimately the suit proceeded under order 26 rule 10(A) u/s 47 CPC against defendant no. 1 and 2. It is further submitted that after recording of evidence the judgment is passed on contest and preliminary decree is prepared. It is further submitted the

judgment passed by this court cannot be set aside u/s 47 of the CPC and accordingly this petition u/s 47 of CPC is not maintainable and accordingly it is prayed that the petition of defendant no. 1 and 2 may be rejected.

Heard both the parties. Perused the record it transpires that judgment in this case has been passed on 28.05.2019. Accordingly preliminary decree has been prepared and suit is pending for appointment of Survey Knowing Advocate Commissioner for partition of suit property by metes and bounds, in light of the preliminary decree prepared by the court. From the perusal of the record it also transpires that in this case, no final decree has been prepared and title partition suit is still continuing. From perusal of record, it also transpires that there is no execution case pending with regard to title partition suit no. 285/2017. Defendant no. 1 has failed to satisfy the court as to how judgment passed in a civil suit by a competent court having jurisdiction, be challenged and decided u/s 47 of CPC. The court is of opinion that section 47 CPC applies with respect to execution proceeding. Accordingly in light of abovementioned observations this court is of opinion that petition of defendant no. 1 and 2 dt. 13.05.2022 u/s 47 CPC is devoid of any legal ground and same is hereby rejected. *pr 21-1-23*

 (Dictated)

Sub-Judge 1st, Patna City