

In the Court of A.D.J. 9th
Partition Appeal Case No. 41/2010

23.01.2020 Appellant and respondent no.3 are present through their Ld. Counsel. Heard them. Consequently the following order shall dispose of the petition dated 18.03.2019 on behalf of Appellant u/o 41 Rule 27 (Iaa) C.P.C. supported with affidavit and its rejoinder thereof dated 12.04.2019 on behalf of the respondent No.3.

ORDER

The Ld. Counsel on behalf of the appellant by pressing the petition dated 18.03.2019 submitted that the sole appellant Girija Devi died on 26.09.2012 after which her daughter Most. Shyama Prasad was substituted in her place as appellant on 21.12.2013 as the deceased another son was already a party to the suit. It was further submitted that Ramrati Devi @ Nirdhaniya Devi was fake lady and she was legally wedded wife of Asharfi Mahto, R/O village Azna and therefore, she had no concern at all with family of Late Rameshwar Singh.

The original partition suit no. 190/73 was filed by Rameshwar Singh only who died during the pendency of the suit. Thereafter, Ramrati Devi and Ram Kumar Singh succeeded in getting themselves transposed in the category of plaintiff (now respondent in the partition suit no. 190/73) and thereafter only Ram Kumar Singh had been major.

It was further submitted that the appellant was living outside of the state with her family members at Ranchi and, therefore, came to know about the pendency of the appeal at a very later stage and then only got herself substituted. She was not impleaded originally in the partition suit, otherwise, she would have taken efforts of bringing the “voter list” in evidence which could have shown, by its bare perusal, that Ramrati Devi was the legally wedded wife of Asharfi Mahto of Village Azna. Therefore, due to want of her impleading in the original suit and coming at very later stage in this appellate stage and coming to the knowledge of this document, the “voter list”, by obtaining a certified copy of the same which was produced as Ext-1 in Misc Case no 55/2004, under order-9, rule-13 C.P.C., brought by Ram Shankar Singh @ Sumendra Prasad, still pending. Therefore, even after due diligence, the existence of the documents was beyond the knowledge of the petitioners and which was a very necessary documents for a just decision of the case, the additional evidence of accepting this document, on record was necessary.

On the other hand, the Ld. Counsel on behalf of respondent no.3 objected by arguing by way of pressing their petition dated 12.04.2019 that if the appellant was a family member, as she was not contended to be and was said to be stranger to family, then she must have the knowledge of entire proceeding of the original partition suit as well as its appeal and the concerned grounds and documents related with the proceedings. Therefore, the instant petition was only in order to linger upon the case and not liable to be maintainable to be allowed.

Hearing the rival submissions and perusing the documents, and considering the fact that the instant appellant was not made party to the original suit and that she came to know about the existence of the documents only after appearing in the case, Misc 55/2004, Execution – 05/2010, Misc- 23/2017 which all are pending, and that certified copy of the document was obtained from case of Misc. 55/2004, as well as the principles laid down in the case of ***Union of India Vs K.V. Laxman, PLJR 2016 (4) S.C. Page 40 to 46***, wherein, it was held that if there was justifiable reason for not filing such evidence at the trial stage which was relevant and materials for deciding the rights of the parties which are the subject matter of the lis, the additional evidence should be allowed, for deciding whether Ramrati Devi was the family member or not and consequently what would have been the fate of the original partition suit, the instant petition of appellant under consideration is allowed, accordingly and the document mentioned therein, is permitted to be taken in as additional evidence and to be marked as exhibit on behalf of appellant, in the instant appeal case.

Fixed for further step on 29.01.2020

Dictated

A.D.J. IX