

आदेश की क्रम  
संख्या और  
तारीख

## आदेश और पदाधिकारी का हस्ताक्षर

आदेश की क्रम  
संख्या और  
तारीख के साथ

In The Court Of: Land Reforms Deputy Collector, Arwal.

Case No. 01/ 2018-2019

Avdhesh Sao- applicant

Vrs.

Dharamshila Devi & others— opposite parties

Present- Rakesh Kumar, DCLR

Learned Advocate of applicant

1. Md. Afsar Hamid.

Learned Advocate of opposite parties

1. Sri Arvind Kumar.

26-04-2018

### ORDER

Both the parties appeared at the time of hearing. The present case is related to

### Schedule

Khata	Plot	Rakwa A- D	Boundary
247 Miljumala 80 desimal	1003	20 desimal out of $26\frac{3}{4}$ desimals.	
186 Miljumla 30 desimal	1132	$4\frac{1}{2}$ desimals out of 06 desimals.	
246 Miljumal 50 desimals	1080	$12\frac{1}{2}$ desimals	

**Mauza—Fakarpur, P.S.+ Anchal+ Dist-Arwal**

The learned advocate of applicant submitted the Geneological Table (GT) of the family and said that applicant's ancestor was Late Harnam Sao and he had two sons namely Late Jhagru Sao & Late Bishundhari Sao alias Nanhak Sao F/o Avdhesh Sao (applicant). Further, Jhagru

*(Signature)*

Sao had two daughters namely Kalapati Devi & Chanpatiya Devi. Learned advocate said that disputed khata 247 & plot No-1003 had total area of 80 desimals and Late Hari Sao were three brothers & accordingly Hari Sao received an area of  $26\frac{3}{4}$  desimals as per his share. Further, in disputed khata-186, plot No-1132, which comprises an area of 30 desimals is also raiyati land, in which Late Jhagru Sao & Late Bishundhari alias Nanhak Sao has their residential houses. However, learned advocate claimed that parents of applicant and his cousin sisters expired leaving joint property in name of applicant, so jamabandi of disputed khata-246 & 247 exists in his name. He is of view that out of total property in name of Harnam Sao, half the property is of applicant and next half is of Kalapati Devi & Chanpatiya Devi. He further, informed that Kalapati Devi had given Bakshish of her share to Kanti Devi W/o Avdhesha Sao comprising an area of 9.375 desimals i.e. 03 katthas of land. However, he alleged that without partition of joint property, Chanpatiya Devi sold more than her share to Dharmshila Devi W/o Mangleshwar kumar (op-01). However, applicant claims  $\frac{3}{4}$  of joint property which is in name of Harnam Sao and this he wanted to carve out through private Amin which was opposed by opposite parties. He also informed that applicant had filed a case No-35/2017 in court of Sub Judge-01 on basis of wrong suggestion and it ended on 30.10.2017 due lack of advocacy by applicant and moreover, op's of this case were not party in that case. So learned advocate pleaded for measurement

*Beu*

& demarcation of his share and if dispossession is found than it should be restored to applicant.


Learned advocate of opposite parties submitted on behalf of Dharamshila Devi (op-01) & her husband Mangleshwar Kumar S/o Gopal Sao (op-02) that suit is bad for non-Joinder of Kalapati Devi & Kanti Devi and misjoinder of Mangleshwar Kumar. He too informed about civil suit No-35/2017 filed by applicant of this case against Chanptiya Devi & Kalapati Devi and in between of proceeding, Chanpati Devi expired and later case was dismissed in default. Thus, this case filed on behalf of applicant is hit U/o ix rule-09 of code of civil procedure. Further, statements made in plaint of T.S. No-35/2017 is different from the statement made in petition of this case. Thus, application is barred by principle of estoppels, waiver & acquiescence. Learned advocate agreed with GT given by applicant but disagreed with statement that applicant was 'karta' of joint property after desmise of his father & uncle and stated that infact Jhagru Sao & Bishundhari Sao alias Nanhak Sao had already partitioned their joint property in their life time and in this regard, learned advocate pointed out discrepacies in plaint. Learned advocate said that Dharamshila Devi (op-01) is genuine purchaser and her vendor Chanpati Devi sold the land to her through registered kewala dated 05.05.2017 by paying consideration amount of Rs. 569000/ (Rs- Five Lakh Sixty Nine Thousand) only. Learned advocate pointed out the statement of applicant and stated that if no partition had taken place in joint family then now Kalpana Devi executed a deed of gift in favour of wife of applicant.


*Beal*

So he alleged that such 'Bakshishnama' is forged & fabricated and alleged that claim of applicant regarding measurement of disputed land by any private amin is hypothetical in nature & its purpose is to file frivolous case against op to harass them. So learned advocate writes in written statement that case is fit to be rejected.

Heard the learned advocates and perused the documents available on record and found that applicant is not clear about partition in joint family property. However, he has right over measurement of his land which has been received through "Bakshish" but can not ask for measurement of 2/3 rd of total family property till any documentary evidence is produced by applicant. So he can not be granted relief for measurement of whole property but he can approach circle office for measurement of his own land.

Dictated and corrected.

  
Land Reforms Deputy Collector  
Arwal

  
Land Reforms Deputy Collector  
Arwal.