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IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.179 of 2013

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1. Sushil Kumar Rai, son of late Sri Pati Rai.
2. Usha Kiran Devi @ Bindu Devi wife of Lallan Rai, both residents of village-Chotaka Diharama, P.S. Sonhan, District-Kaimur (Bhabhua).

.... Appellant/s

Versus

1. Madan Mohan Rai, son of Rameshwar Rai.
2. Sheo Dhani Bind, son of Govind Bind.
3. Akshaibar Bind, son of Bhikhari Bind, all residents of village-Chhotaka Diharama, P.S. Sonhan, District-Kaimur (Bhabhua).
4. Indu Devi wife of Ramashish Rai, resident of village-Madiani, P.S. Sheosagar, District-Rohtas (Sasaram).
5. Kashi Rai, son of Lakshami Rai.
6. Radheshyam Rai, son of Lakshami Rai.
7. Sheo Nath Bind, son of Sukalu Bind.
8. Jiut Bind, son of Biga Bind.
9. Bhikhari Hind son of Govind Binbd.
10. Sheo Bhajan Bind, son of Govind Bind.
11. Rameshwar Rai, son of Dukhi Rai.
12. Damodar Rai, son of Sri Kishun Rai, all residents of village-Chhotaka Diharama, P.S. Sonhan, District-Kaimur (Bhabhua).

.... Respondent/s

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Appearance :
For the Appellant/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 02-03-2015

Heard the learned senior counsel appearing on behalf of the appellants.

The defendants are the appellants in this second appeal

against the judgment and decree of reversal.

The plaintiffs filed the suit praying for declaration that the decree passed in earlier T.S. No. 98 of 1982 was illegal, vitiated by fraud and collusion and not binding on the plaintiffs. The defendants filed a petition praying for rejection of the plaint under Order VII Rule 11 (D) C.P.C. on the ground that the issues arising in the suit had already been determined in the previous suit. The trial court rejected the plaint accepting the petition on behalf of the defendants. However, in appeal, the appellate court reversed the judgment and order of the trial court. The present second appeal has been filed assailing the judgment and decree of the trial court.

The factual expose' are that a Title Suit No. 98 of 1982 was filed by the defendants of the present suit for declaring the suit land to be their own property and further declaring the survey entry in that regard in the name of the State of Bihar as wrong. In the said suit, some persons were impleaded as intervener defendants under Order 1 Rule 8 C.P.C. on the basis of their claim that the suit land was a public land. The said suit was decreed and in appeal also the decree was maintained. Thereafter, the present suit i.e. T.S. No. 89 of 1995 has been filed seeking relief against the decree passed in the aforesaid T.S. No. 98 of 1982 on the ground of fraud and collusion. The defendants (the plaintiffs of the earlier suit) filed a petition seeking

rejection of the plaint under Order VII Rule 11 (D) C.P.C. on the ground of bar of res judicata as envisaged under Section 11 C.P.C. The trial court rejected the plaint but the appellate court has held that the issues of res judicata being mixed questions of law and fact and as there was allegations of fraud and collusion in obtaining the previous judgment and decree, the present suit could not have been rejected under Order VII Rule 11 (D) C.P.C.

The learned senior counsel for the appellants has submitted that the bar of res judicata is based on general policy to avoid frivolous litigation. It has been canvassed that the present suit was ex facie barred by res judicata as the same has been filed even by the person who were parties in the earlier suit. It has also been submitted that the appellate court has not correctly interpreted the law in this regard as laid down by various decisions of the Apex Court.

After perusal of the impugned judgment and considering the submissions, it is limpid that the defendants have filed the petition for rejection of the plaint under Order VII Rule 11 (D) C.P.C. alleging the bar of res judicata. It is by now well settled that while considering the issues of rejection of the plaint the averment made in the plaint without any addition or subtraction is to be looked into and if on the basis of those averments, it would appear that the suit is bound to fail, only in those cases the plaint is to be rejected. In the instant case,

the suit has been filed by the plaintiffs seeking relief against the previous decree on the ground of fraud and collusion. Whether the plaintiffs would be able to substantiate their allegations of fraud and collusion is not to be decided at the stage of Order VII Rule 11 (D) C.P.C. and the same can only be decided after framing appropriate issues and providing the opportunities to the parties to lead evidence. The appellate court below has correctly considered the provisions of law in this regard and has rightly passed the impugned judgment and decree.

There is no substantial question of law arising for consideration in this appeal which is accordingly dismissed.

(V. Nath, J)

Devendra/-

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