

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3245 of 2011

Paras Nath Chaudhary S/O Late Harebansh Chaudhary Kr/O Village- Narsanda,
P.O. & P.S.- Kanti, District- Muzaffarpur

....Plaintiff/Petitioner

Versus

1. Most. Nutan Devi W/O Late Shambhu Chaudhary R/O Village- Samaspur, P.O.- Kalwari, P.S.-Kanti, District - Muzaffarpur
2. Sri Prabhu Chaudhary S/O Late Ram Chandra Chaudhary R/O Village- Samaspur, P.O.-Kalwari, P.S.-Kanti, District - Muzaffarpur
3. Rubi Kumari Minor D/O Late Shambhu Chaudhary, Through Her Guardian Mother Most. Nutan Devi R/O Village- Samaspur, P.O.-Kalwari, P.S.-Kanti, District - Muzaffarpur
4. Pinki Kumari Minor D/O Late Shambhu Chaudhary, Through Her Guardian Mother Most. Nutan Devi R/O Village- Samaspur, P.O.-Kalwari, P.S.-Kanti, District - Muzaffarpur
5. Nisha Kumari Minor D/O Late Shambhu Chaudhary, Through Her Guardian Mother Most. Nutan Devi R/O Village- Samaspur, P.O.-Kalwari, P.S.-Kanti, District - Muzaffarpur
6. Sonu Kumar Minor S/O Late Shambhu Chaudhary Through Is Mother Most. Nutan Devi R/O Village- Samaspur, P.O.-Kalwari, P.S.-Kanti, District - Muzaffarpur
7. Fulwa Devi D/O Ram Chandra Chaudhary R/O Village- Samaspur, P.O.- Kalwari, P.S.-Kanti, District - Muzaffarpur
8. Sonwa Devi D/O Ram Chandra Chaudhary R/O Village- Samaspur, P.O.- Kalwari, P.S.-Kanti, District - Muzaffarpur
9. Tetari Devi W/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
10. Vishwa Nath Sah S/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
11. Birendra Sah S/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
12. Vikram Sah S/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
13. Bimal Sah S/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
14. Gita Devi W/O Late Ram Nandan Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti, District- Muzaffarpur
15. Satya Narayan Sah S/O Late Jagdish Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti,Distt.- Muzaffarpur
16. Uma Shankar Sah S/O Late Jagdish Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti,Distt.- Muzaffarpur
17. Raghu Nandan Sah S/O Late Etwari Sah R/O Village- Bariarpur, P.O.- Sirsia, P.S.- Kanti,Distt.- Muzaffarpur

....Defendants 2nd party/Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Prasad Singh

Mr. Rajeev Ranjan Prasad
Mr. Rajendra Kumar

For the Respondent 1 to 14 Mr. Manoj Kumar Manoj

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 31-08-2015

Heard Mr. Umesh Prasad Singh, Senior Counsel for the petitioner and Mr. Manoj Kumar 'Manoj' for respondent nos. 1 to 14.

No one has appeared on behalf of respondent nos. 15 to 18.

The plaintiff of T.S. No. 94 of 2000 has filed the present writ application aggrieved by the order dated 19.07.2010 passed by the Execution Munsif, Muzaffarpur, whereby the application dated 18.11.2009 filed by the respondent nos. 1 to 14(defendant 1st party in the suit) questioning the valuation of the suit and payment of the court fee on the plaint was considered and allowed. The court below decided to try it as a preliminary issue and directed the parties to adduce evidence on this point/issue.

Brief background of the case are as under:-

The plaintiff executed a sale deed on 29.02.1968 in respect of two katha, 01 dhur of land bearing R.S.P. No. 1364 situate in village Narsanda in the district of Muzaffarpur(detailed in schedule-1 of the plaint) in favour of Jagdish Sah and Raghunandan Sah (respondent nos.15 to 18/defendant 2nd party to the suit). Owing to non payment of the consideration money the sale deed was cancelled



by the plaintiff on 13.03.1968. The plaintiff had also executed a sale deed on 29.02.1968 in favour of Mahendra Rai and Ram Lakhan Sah (defendant 1st party and respondent nos. 1 to 14 herein) measuring 01 katha of land. The consideration money having not been paid by them, the sale deed dated 29.02.1968 was also cancelled by the vendor (plaintiff) on 13.03.1968. Jagdish Sah (vendee) filed T.S. No. 85 of 1968 in the court of Munsif West Muzaffarpur for declaration of title and confirmation of possession in respect of schedule-1 land. The suit was decreed in favour of Jagdish Sah (plaintiff of the suit) on 31.03.1974. The writ petitioner-plaintiff filed T.A. No. 95 of 1974 which was allowed and T.S. No. 85 of 1968 was dismissed. Defendants 2nd party (respondent nos. 15 to 18) filed a second appeal thereagainst in the year 1976. This Court by order dated 28.11.1979 held that in view of the notification published under section 3 of the Bihar Consolidation and Holding Act, 1956 the suit and the appeal stood abated and the Consolidation Officer was required to decide the dispute in accordance with law. The purchaser (defendant 2nd set) approached the Consolidation Officer vide Case No. 292 of 1980 for recording their names in respect of the suit land. The Consolidation Officer allowed the application on 15.05.1980 for 01 katha of land out of the suit land. The plaintiff-writ petitioner filed an appeal thereagainst vide Appeal No. 139 of 1980 before the appellate



authority/forum who dismissed the appeal on 28.01.1981. A revision thereagainst was filed vide Case No. 335 of 1981 which was dismissed on 11.01.1984. Dissatisfied therewith, the plaintiff-writ petitioner filed CWJC No. 630 of 1984 in this Court. By a proceeding dated 27.11.1995, this Court quashed the order dated 11.01.1984 and remitted the case to the revisional authority for fresh consideration/adjudication. The revisional court on such remand, while re-considering the revision application no. 335 of 1981, also considered a fresh case filed beyond time by the defendant 1st party(contesting respondents herein) vide Case No. 250 of 1997. By an order dated 15.12.1998 the revisional authority allowed the Revision Case No. 250 of 1997 and rejected the revision application filed by the writ petitioner. The plaintiff-writ petitioner filed CWJC No. 2264 of 1999. This Court, while disposing of the said writ application, held that the parties would be at liberty to institute a suit before the court of competent civil jurisdiction and seek the remedy in accordance with law and the order passed by the Joint Director (Consolidation) and other consolidation authority shall not cause any prejudice in the way of the civil court in adjudicating the dispute. In such circumstances, the writ petition presented a fresh plaint which was registered as T.S. No. 94 of 2000. This was presumably because the earlier suit filed by the plaintiff was not

revived and liberty to file fresh suit was granted. In this suit, the defendant-1st party after several years of institution thereof filed the application for considering the valuation of the suit as the preliminary issue which was allowed by the trial court under the impugned order.

Mr. Singh while assailing the order has urged that the valuation of the suit is not a legal question. It may at best be a mixed question of law and fact. The trial court erred in law in accepting the prayer of the defendants (respondents herein) to consider the valuation matter as the preliminary issue and permitting the parties to lead evidence. Secondly, it is argued that payment of adequate court fee on the basis of the relief(s) sought for in the plaint is basically a matter between plaintiff and the court. The defendant cannot raise a grievance in this regard unless and until the valuation given in the suit shocks the conscience of the court. The trial court completely failed to appreciate that the main relief prayed in the plaint was for declaring that the registered sale deed dated 27.03.1968 executed by the plaintiff in favour of the ancestor of the defendants was inoperative confirming no right title and interest on the defendant 1st party over the suit land. The second relief was simply consequential and implicit in the main relief. The background under which the plaint was re-presented was also lost sight of by the trial court. Earlier for similar relief suit was filed which was entertained and allowed.



The matter, however, thereafter remained pending as forum remained indecisive. Firstly, under order of this Court the matter was directed to be agitated before the consolidation authority where several rounds of litigation were fought between the parties and finally this Court under order passed in CWJC No. 2264 of 1999 granted the petitioner again the liberty to raise the issue before the civil court for resolution of the dispute. In this background, the relief sought for in the plaint could have also been held barred by limitation. Although, no such issue was raised by the defendants but even if raised the court could not have held so considering the fact that the issue remained alive at the instance of the plaintiff and the forum was ultimately decided to be that of the civil court under the order of this Court passed in CWJC No. 2264 of 1999.

Counsel for the defendant-respondents has, however, supported the impugned order. It has been contended that the valuation of the suit was made on the basis of the valuation of the sale deed dated 27.03.1968. The plaintiff has sought declaratory relief but has also sought cancellation of the sale deed dated 27.03.1968 which is independent relief. The trial court under the impugned order has held that the plaintiff paid the court fee and valued the suit on the basis of the sale deed dated 27.03.1968 while he should have valued the suit as per the market value of the property as on the date of the

filing of the suit.

On a consideration of the rival submissions of the parties, it appears to this Court that the court below has not appreciated the case of the parties in the background of the facts which have been noticed hereinabove. The court was required to take into consideration that under order 14 Rule 2 CPC only a legal issue not an issue which is a mixed question of fact and law should be allowed to be considered as the preliminary issue. The court below also failed to keep in focus that any issue with regard to valuation of the suit should not generally be allowed to be raised by the defendant. The trial court has also not considered that the plaint was being re-presented under orders of this Court which was in fact revival of the earlier suit filed by the plaintiff and remained inconclusive owing to diverse orders passed by different courts including the authorities under the Consolidation Act. The relief prayed/sought in the suit has to be considered in the light of the pleadings made in the plaint. If the relief with regard to declaration that the sale deed dated 27.03.1968 executed by the plaintiff in favour of ancestor of the defendant is held void/inoperative then the title of the suit land remained with the plaintiff (executor of the sale deed). The court below ought to have appreciated this aspect of the matter before taking a decision on the petition of the defendants for deciding the issue of court fee as the

preliminary issue. The order passed by the learned court below does not reflect these considerations. This Court would add here that it is always open to the trial court to frame all relevant issues appearing in the case and try them after permitting the parties to adduce evidence. The grievance is being raised in this writ application only against trying this issue as the preliminary issue.

Taking into account the aforesaid facts emerging from the records, in my view, the order passed by the trial court merits to be set aside. I order accordingly. The matter is remitted to the court below for fresh consideration and order on the petition filed by the defendant-respondents after giving an opportunity of hearing to both the parties.

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(Kishore Kumar Mandal, J)

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