

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6245 of 2014

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Baidyanath Mallik Son Of Sri Mahabir Mallik Resident Of Village
Mahinam Patti Bahera Bazar, Pergana Habi, Sub-Registry Bahera, Sub-
Division Benipur, District Darbhanga.

.... Petitioner/s

Versus

1. Bharat Mallick Son Of Late Mahavir Mallick
2. Anil Kumar Mallick Son Of Bharat Mallick Residents Of
Mauza/Village Mahinam Patti, Bahera Bazar, P.S. Bahera, P.O. Bahera,
District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 05-11-2015

Heard the learned counsel for the petitioner.

The defendant is the petitioner in this application questioning the rejection of his petition by the learned court below whereby the prayer was made for rejection of the plaint under Order 7 Rule 11 C.P.C.

The plaintiffs have filed the suit praying for partition of their share in the suit property after declaration that the judgment and decree passed in the earlier T.S. No. 37 of 1986 is illegal and not binding on the plaintiffs. The defendant appeared and have filed the petition praying for rejection of the plaint under Order 7 Rule 11 (a) on the ground that the earlier two suits i.e.

T.S. No. 37 of 1986 and T.S. No. 108 of 1977 have been decided in presence of the plaintiffs and the same are pending in appeal and therefore the present suit cannot proceed. The learned court below has rejected the petition filed by the petitioner for rejection of the plaint and has held that the present suit i.e. T.S. No. 67 of 2008 is maintainable.

The learned counsel for the petitioner has submitted that the plaintiffs of the present suit were parties in the earlier suits and the suit properties in the earlier suits were also the same and in view of the decisions in those earlier two suits, the present suit cannot continue and the plaint should have been rejected. It has been canvassed by the learned counsel that the learned court below has not correctly appreciated the facts and materials on record and has wrongly held that the present suit is maintainable.

After considering the facts and submissions on behalf of the petitioner as well as the materials on record which includes the plaint of the present suit, it is manifest that the plaintiffs have also sought the relief against the judgment and decree passed in the earlier suits and have also made averments in the plaint that in the earlier suits, their interest was not adequately represented. This fact is still to be established on the basis of the evidence to be laid by the parties, and the plaint cannot be rejected on this score. This

court finds that the learned court below has not committed
illegality or error of jurisdiction in passing the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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