

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16721 of 2010

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Ramesh Prasad, Son of Bishwanath Prasad, Resident of Village- Chitrasenpur
Subhakaran Ganj, P.S.- Arrah, Muffasil, Distt.- Bhojpur.

.... Petitioner.

Versus

1. Shankar Dayal Singh, Son of Jhagru Yadav
2. Smt. Sanju Keshri, Wife of Shio Narayan Prasad Keshri
3. Ram Chandar Prasad Keshri, Son of Late Rajrup Sah
All of Village- Chitrasenpur Subhakaran Ganj, P.S.- Ara Muffasil, District-
Bhojpur
4. Md. Eqbal Son of Md. Tauheed
5. Md. Sanuvillah S/O Late Abdul Jabar
6. Jamil Ahmad Son of Late Nurul Hoda
7. Sakil Ahmad Son of Late Nurul Hoda
8. Akil Ahmad Son of Late Nurul Hoda
9. Noor Jehan D/O Late Nurul Hoda
10. Khurshisa D/O Late Nurul Hoda
11. Halina D/O Late Nurul Hoda
12. Jamila D/O Late Nurul Hooda
13. Asna Khatoon D/O Late Nurul Hooda
All resident of Village- Daulatpur, P.S.- Ara Muffasil, Distt.- Bhojpur

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Ram Lallan Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-01-2015

The petitioner seeks quashing of the order dated 27.07.2010 passed in Title Suit No. 35 of 2001, whereby the learned trial court rejected the petition of the petitioner to declare that the title suit as not maintainable.

2. The brief fact of the case would appear from order dated 13.03.1997, passed in C.W.J.C. No. 11900 of 1993, which has been annexed by the petitioner as Annexure-3.



3. According to the petitioner, the dispute relates to C.S. Plot nos. 335, 336 and 337 bearing khata no. 67, which was recorded in the name of State of Bihar as Gair Mazarua Aam/Gair Mazarua Malik/Jar Pesgidar. The land was in possession of Md. Tauhid, Sanaullah and Nurul Hoda, who gifted the same on 9th July, 1964 in favour of Upper Primary School. During the revisional survey, the plot was numbered as Rs. Plot Nos. 393 and 370, which however continued to remain in the names of Md. Tauhid, Sanaullah and Nurul Hoda.

4. The petitioner submits that he is purchaser from the doner Md. Tauhid on 18.11.1986. Some persons had earlier tried to raise some dispute, which was rejected by the Revenue authorities. Furthermore, in order to harass him, Title Suit No. 35 of 2001 was filed by one Sankar Dayal Singh, Smt. Sanju Keshri and Ram Chandar Prasad Keshri.

5. The petitioner has challenged the maintainability of the suit preferred by the aforesaid respondent nos. 1 to 3 in representative capacity, representing the school. He submits that the school itself has not filed the suit.

6. The trial court rejected the petition of the petitioner stating that the suit has been filed pursuant to resolution of the School Committee authorizing the plaintiffs to file the same. Furthermore, the

trial court observed that this Court way back in the year 2001 has permitted the plaintiff to represent the suit in representative capacity on 06.03.2001, which order has not been challenged. The trial court further observed that whether competent authority of the school has authorized the plaintiffs to file the suit is a mixed question of fact and law, which cannot be decided as a preliminary issue.

7. I am in agreement with the view taken by the learned trial court in view of expressed provisions contained in Order XIV Rule 2 of the C.P.C., which states that a Court may dispose of an issue as a preliminary issue; if it relates to jurisdiction of the Court or if the suit is barred under the law. As the suit is of the year 2001, the trial court is directed to dispose of the same expeditiously on priority basis preferably within a period of one year from the date of receipt of a copy of this order. All the parties would co-operate in the suit.

8. This application stands disposed of.

(Samarendra Pratap Singh, J.)

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