

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.127 of 2011

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Jagdish Das @ Jagdish Ravidas, Son of Late Aghori Das, resident of
Mohalla-Basudeopur, P.S.-Kotwali, P.O.-Munger, District-Munger.
-Defendant-Petitioner.

Versus

1. Mostt. Kala Devi, Wife of Late Chalitra Das.
2. Ranjeet Das.
3. Sanjeet Das.
4. Madan Das.

All sons of Late Chalitra Das.

All Resident of Mohalla- Basudeopur, P.S.-Kotwali, P.O.-Munger,
District-Munger.
-Plaintiffs-Opp.Parties.

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Appearance :

For the Petitioner/s : Mr. Harshwardhan Sahay
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

17 19-02-2015

Heard Mr Harshwardhan Sahay, the learned
counsel appearing on behalf of the petitioner and also the learned
counsel appearing for the opposite parties.

Calling in question the legal sustainability of
the order dated 17.05.2011 passed in T.S.No.71/96, the defendant
in the suit has filed this revision application. By the said order the
learned court below has rejected the petition filed by the petitioner
under Order 14 Rule 2 C.P.C. for deciding the issue of res judicata
as preliminary issue.

The learned counsel for the petitioner has
submitted that earlier the defendant-petitioner filed a suit for
eviction against the plaintiff-opposite parties and in that suit the



issue of existence of relationship of landlord and tenant was framed. It has, however, been pointed out that while determining the said issue the said court had gone into the validity of the Hukumnama in detailed manner and decided the same against the plaintiff-opposite parties. It has been pointed out that the said suit was decreed and the decree was also affirmed at the appellate stage. The learned counsel for the petitioner has further canvassed that if in a court of limited jurisdiction in a suit for eviction, the issue of title has been gone into a substantial manner then the said issue cannot be allowed to be reagitated again in view of the bar of res judicata. The learned counsel has also placed reliance on the decision of the apex court in the case of **State of Tamil Nadu Vs. State of Kerala, AIR 2014 SC 2407.**

The learned counsel for the opposite parties, has however, supported the impugned order.

After careful consideration of the matter and submissions on behalf of the parties, it is admitted position that earlier the present petitioner as plaintiff filed eviction suit against the present opposite parties as defendants and obtained a decree for eviction. In that suit in view of the denial by the defendants of the relationship of landlord and tenant the issue was framed in that regard. While determining the said issue the court had gone into



the rival cases of the parties on the question of title. However, it is well settled that while determining the said issue of relationship of landlord and tenant in an eviction suit, a court has the jurisdiction only to go into the question of title incidentally and as such it can not be said that the said issue was directly and substantially the issue in the suit for eviction. In the judgment passed in the eviction suit (annexed with the revision application), it is manifest that no issue of title has been framed. In that view of the matter, it is transparent that any finding relating to the claim of title of the parties thereto would only be incidental and would not attract the bar of res judicata in a subsequent suit filed on the basis of title for the same property. The reliance placed by the learned counsel for the petitioner on the decision by the apex court in the case of **State of Tamil Nadu Vs. State of Kerala, AIR 2014 SC 2407** is clearly misplaced as in that case their lordships were not considering the question of res judicata for findings with regard to the relationship of landlord and tenant recorded in an eviction suit, in a subsequent suit on the basis of title. This Court therefore, is not persuaded to align with this submission on behalf of the petitioner.

Another aspect which is also apparent and accepted by the learned counsel for the parties is that no issue in the suit was framed by the time the defendant-petitioner filed the

petition praying for hearing the issue of res judicata as preliminary issue under Order 14 Rule 2 C.P.C. The said issue at that stage could not have been tried as preliminary issue until the issues were settled in the suit in view of the law laid down by this Court in the case of **Dr Shashi Kumar Narain Sinha Vs Smt Pratima Sinha, 2002 (1)PLJR 549.**

From the perusal of the impugned order also it appears that the learned court below has not committed error of jurisdiction or material irregularity in rejecting the petition filed by the petitioner for considering the issue of res judicata as preliminary issue.

This revision application is, accordingly, dismissed. However, it is observed that nothing in the present order or impugned order shall prejudice the cases of rival parties during the course of trial of the suit.

(V. Nath, J)

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