

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10780 of 2011**

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Manorma Sinha & Ors.

.... .... Petitioner/s

Versus

Raj Kumar & Ors.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ram Sumiran Singh, Advocate.

For the Respondent/s : Mr. Kumar Binod Bariyar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

12 27-10-2015

Heard learned counsel Mr. Ram Sumiran Singh on behalf of the petitioners and learned counsel Mr. Kumar Binod Bariyar on behalf of plaintiff-respondent no.1.

2. This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners against the order dated 28.11.2006 passed by the learned Subordinate Judge-IV, Begusarai in Title Suit No.109 of 2003 whereby the court below rejected the application filed by the defendants-petitioners for dismissal of the suit being barred by principles of *res-judicata* and barred by law of limitation.

3. The learned counsel for the petitioners submitted that in fact for the same relief i.e. for declaring the gift deed dated 17.03.1979 in favour of defendant no.1 executed by his father's sister Smt. Jagdambi Kuwari is forged, invalid, inoperative, conveying no title and possession, the father of the present



plaintiff-respondent had filed Title Suit No.74 of 1979. The suit was dismissed by the trial court and the father of the present plaintiff-respondent filed title appeal. The lower appellate court also dismissed the title appeal and thereafter second appeal was filed before the High Court being Second Appeal No.544 of 1999. By terms of order dated 22.11.2002 the High Court dismissed the second appeal with cost throughout. The present plaintiff-respondent no.1 was born in the year 1981 and after dismissal of the second appeal in the year 2002 the present suit being Title Suit No.109 of 2003 was filed by the plaintiff for the same relief. In such situation, the present defendants-petitioners filed the application for dismissal of the suit being barred by principles of *res-judicata* and is also barred by law of limitation but the court below instead of deciding the matter directed that the application shall be considered at the time of final hearing of the suit. According to the learned counsel, the court below should have decided this question of barred by the principles of *res-judicata* as a preliminary issue under Order 14 Rule 2 of the C.P.C. because it will relate to the jurisdiction of the Court and for deciding this issue i.e. *res-judicata* in the present case, no evidence is necessary. The learned counsel submitted that the facts of the case are admitted by the other side.



4. The learned counsel appearing on behalf of the plaintiff-respondent admitted this fact that his father had filed Title Suit No.74 of 1979 for the same relief, which was dismissed by the trial court and it was confirmed by the appellate court as well as by the High Court but according to the learned counsel after present plaintiff was born, it was the duty of his father to have impleaded the son i.e. the present plaintiff. Since the father had not added the son, a new cause of action has arisen in favour of the son and as such he has filed the present suit.

5. It may be mentioned here that the present plaintiff-respondent is not claiming any independent title to the property.

6. Section 11 of the Code of Civil Procedure reads as follows:

**“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”**

7. In the present case, so far the factual position is concerned, it is not in dispute that the father had filed earlier suit for the same relief. The son has filed the present suit claiming



same relief and the son is claiming title through his father i.e. the plaintiff in the earlier Title Suit No.74 of 1979. The judgment of the High Court passed in Second Appeal No.544 of 1999 has been annexed as Annexure-I to this writ application. It is clear that for the same relief the father had already fought upto the High Court and after dismissal of this title suit in second appeal the present suit has been filed. These are admitted facts and no evidence is required. In such circumstances it is not desirable that the matter should be left open to adduce evidence for the proof of the same fact because it will not only harass the party and it will be only a formality causing injustice to the defendant.

8. Section 58 of the Evidence Act provides that no fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

9. As stated above in the present case, the fact of institution of earlier suit by the father of the present plaintiff is admitted by the plaintiff and the fact that the suit was decided up to the High Court dismissing the suit is also admitted by the present plaintiff. Now, it will be futile to allow the suit to continue

in the trial court for the same relief. The court below in view of the above facts and circumstances of the case and considering the nature of the relief claimed should have decided the application but has not exercised the jurisdiction and wrongly held that the application should be disposed of at the time of hearing. The court below did not notice the fact that in the present case the facts are admitted and only principle of *res-judicata* is required to be applied.

10. In the result, this writ application is allowed. The impugned order is set aside and it is held that the suit filed by the plaintiff-respondent no.1 is barred by *res-judicata*, as such it is dismissed.

**(Mungeshwar Sahoo, J)**

Harish/-

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