

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6366 of 2011

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1. Girija Bhagat S/O Late Banshi Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad.
 2. Ashok Bhagat S/O Girija Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad.
 3. Anil Bhagat S/O Girija Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad.
 4. Arun Bhagat S/O Girija Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad.

.... Petitioners

Versus

1. Baijnath Bhagat S/O Late Huseni Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad (Bihar)
2. Ravindra Nath Tagore S/O Late Huseni Bhagat R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad (Bihar)
3. Ram Rekha Singh S/O Janeshwar Singh R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad (Bihar)
4. Ram Parikha Singh S/O Janeshwar Singh R/O Vill-P.O. And P.S. Obra, Distt-Aurangabad (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar

For the Respondent/s : Mr. B.J. Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 01-09-2015

The defendants- petitioners of Title Suit no. 263 of 1996 filed Title Appeal no. 13 of 2010 challenging the judgment and decree passed in the said suit on 20.6.1998. In the said appeal an application (Annexure-1) was filed under Order 41 Rules 23 and 25 of the Code of Civil Procedure (for short ‘the Code’) for remitting the matter to the trial Court after framing an issue for consideration and decision.

This writ application is filed in the backdrop of

following facts:-

Title Suit no. 263 of 1996 was filed by the respondents for declaring right , title and interest over the suit land and also for recovery of possession. Prior thereto the defendants had instituted Title suit no. 174 of 1994 against the plaintiff(s) of Title suit no. 263 of 1996 for declaration of right, title and interest over the suit land and also confirmation of possession. Alternatively, for re-possession of the suit land. There is no controversy that subject land of these two proceedings are the same. Title suit no. 263 of 1996 was decreed on 20.06.1998 whereas Title suit no. 174 of 1994 was decreed on 23.2.2001. In these factual matrix the appellate Court under the impugned order rejected the said application observing as under in para-2 of the order:-

“2. Perused the case record. On perusal of the case record, it appears that the present Title Appeal is pending for hearing and during course of hearing the petition dated 13.1.11 has been filed on behalf of the appellants stating therein that the two main issues, A. whether the suit is hit by the provision of Section 10 of the C.P.C. and (B) whether the suit is hit by the provision of section 11 of the C.P.C. were not settled by the learned court below. On perusal of the entire record of the appeal, it appears that the certified copy of the plaint arising out of T.S. No. 174/94 was also filed by the appellants but they never suggested and raised that the aforesaid issues should also be framed. The hearing of the appeal is an advance stage. Hence I find the petition

dated 13.1.11 filed on behalf of the appellant is not maintainable as the appeal is filed challenging the judgment and decree dated 22.6.98 and 2.7.98 respectively in T.S. No. 263/96.”

Heard Mr. Mrigendra Kumar in support of the application and Mr. Ojha for the plaintiffs-respondents.

The contention of the petitioners is that in the written statement filed in Title suit no. 263 of 1996, the defendant-petitioner had specifically pleaded about the pendency of the Title suit no. 174 of 1994. The trial Court acted illegally in not framing an issue as to whether the said suit be allowed to continue in accord with the provisions contained in Section 10 of the Code which provides that if two suits for similar relief and between the same parties are pending then the suit filed later shall be stayed. He also pointed that a situation of grotesque nature would arise because Title suit no. 263 of 1996 has been decreed in favour of the plaintiffs-respondents whereas Title suit no. 174 of 1994 filed by the defendants-petitioners has also been decreed on 23.2.2001. The appellate Court completely failed to appreciate this aspect of the matter and passed the order which is unsustainable in law.

Mr. Ojha conversely submitted that Section 10 of the Code, in the facts and circumstances of the case, would not be applicable. Even if the matter is remitted after formulating an issue

no purpose shall be achieved as both the suits have already been disposed of finally. He submits that in fact the subsequent suit being Title Suit No. 174 of 1994 which was disposed of on 23.2.2001 was barred by the principles of res judicata as the dispute between the parties with respect to the suit land had already been decided finally by the judgment and decree dated 20.6.1998 and 02.07.1998 respectively passed in Title suit no. 263 of 1996. It is also contended that the defendants-petitioners had left pairvee in the Title suit no. 174 of 1994 which was subsequently decreed.

On a consideration of the rival submission, in my view, the reason(s) assigned by the appellate Court for rejecting the application of the petitioners do not suffer from any patent perversity. The Court proceeding cannot be allowed to be mis-utilized by getting an order which, even if acted upon, leads no where. The writ application lacks merit.

Dismissed.

(Kishore Kumar Mandal, J)

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