

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2 of 2014

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Smt. Rita Kumari @ Rita Devi

.... Petitioner/s

Versus

Smt. Indu Kumari & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 02-12-2015

Heard the learned counsel, Mr. Naresh Chandra Verma

for the petitioner and the learned counsel, Mr. Hemant Kumar Sharan for the respondents.

This application under Article 227 of the Constitution of India has been filed by the defendant-petitioner against the order dated 16.06.2012 passed by Additional Munsif II, Hajipur in Title Suit No.54 of 1997 whereby the court below refused to decide the maintainability of the suit as preliminary issue as provided under Order 14 Rule 2(2) C.P.C.

The learned counsel, Mr. Verma appearing for the petitioner submitted that the plaintiffs-respondents filed the aforesaid suit for declaring that the compromise decree passed in Title Suit No.27 of 1983 is unlawful, void, nullity and not binding on the plaintiffs-respondents. The petitioner-defendant filed application to decide the question of law as preliminary issue on the ground that the suit filed by the petitioner to set aside the

compromise decree is barred under Order 23 Rule 3A C.P.C. as has been held by the Supreme Court in the case of Horil v. Keshav & Anr., 2012(2) PLJR 73 (SC) but the court below wrongly directed that this issue shall be decided along with hearing of the suit itself and rejected the application filed by the petitioner.

On the other hand, the learned counsel appearing on behalf of the respondents submitted that in fact, in this case, Order 23 Rule 3A C.P.C. is not applicable because the plaintiffs have not claimed for setting aside the compromise decree. They have only sought for a declaration with respect to the said decree.

Perused the order passed by the court below. The court below has only directed that the issue raised by the petitioner shall be considered finally along with other issues.

From perusal of the plaint, it appears that the plaintiffs have only prayed for declaration and they have never prayed for setting aside the compromise decree.

In view of the above position and the fact that the court below has only directed to decide this issue along with other issues, the impugned order cannot be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed.

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(Mungeshwar Sahoo, J)