

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.146 of 2011

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1. Anil Kumar Sinha, Son of Late Ramanuj Prasad Singh @ Khori Prasad Singh.

2. Bhola Prasad Singh, Son of Late Bam Singh.

Both residents of village- Maghada, P.S.-Deepnagar, District-Nalanda.

---(Defendants)-... Petitioners.

Versus

1. Wale Yadav, Son of Late Etwar Yadav.

2. Radhey Shyam Yadav.

3. Vinod Kumar.

Both Sons of Wale Yadav.

4. Manjoo Yadav, Daughter of Wale Yadav.

5. Meethoo Yadav.

6. Photoo Yadav.

Serial No.5 and 6 are sons of Wale Yadav. All residents of Mohalla-Golapur, P.S.-Deepnagar, District-Nalanda.

-(Plaintiffs)-Respondent 1st set.

7. The State of Bihar through District Magistrate, Nalanda.

8. The Sub-Divisional Officer, Biharsharif, Nalanda.

9. The Anchal Adhikari, Anchal-Biharsharif, District-Nalanda.

10. Zila Parishad, Nalanda through its Chairman.

-(Defendants)-Respondents 2nd set.

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Appearance :

For the Petitioner/s : Mr. Srinandan Prasad Singh, Adv.
Mr. Manish Kumar, Adv.
Mr Surendra Prasad Singh, Adv.
Mr. Nasim Nazaz, Adv.
Mr. Ashok Kumar, Adv.

For the Respondent/s : Mr. Namrata Mishra, G.A.-13.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 24-06-2015

Heard Mr. Srinandan Prasad Singh, the learned
counsel appearing for the petitioners.

Calling in question, the legal acceptability of the

impugned order rejecting the prayer of the defendants for rejection of the plaint under Order 7 Rule 11 C.P.C., the petitioners have filed this revision application.

The suit has been filed by the plaintiff-opposite parties for declaration of title with further relief for declaration that the order passed by the authorities under the Code of Criminal Procedure and the provisions of Public Land Encroachment Act be set aside/cancelled. It is not in dispute that the plaintiff has accepted the suit property to be public property but has come out with the case of acquisition of title over the same by prescription/adverse possession.

The defendants have appeared in the suit and filed their written statement.

Mr Singh, the learned counsel for the petitioners has submitted that the suit filed by the plaintiff is not maintainable in view of the admitted fact that there had been earlier orders under Section 133 Cr.P.C. against the plaintiff and further there had been order against the plaintiff for removal of the encroachment over the suit land under Public Land Encroachment Act. It has been canvassed by the learned counsel that the suit against those orders is barred under the relevant provisions of the Act. It has also been urged that the plaintiffs have not disclosed the relevant facts to substantiate their claim of adverse possession.

It has thus been submitted that the learned court below has committed error of jurisdiction in rejecting the petition filed by the petitioners under Order 7 Rule 11 C.P.C.

After perusing the impugned order, the averments made in the revision application and considering the submissions on behalf of the petitioners, it is limpid that the plaintiff has filed the suit praying for the relief of declaration of title over the suit land and the consequential reliefs for setting aside/cancelling the orders under the provisions of Public Land Encroachment Act as well as Section 133 Cr.P.C. against him. The principles governing the jurisdiction under Order 7 Rule 11 C.P.C. for rejection of plaint is now well settled. A plaint can be rejected under the said provision only in a case where on the basis of averments made in the plaint, after taking the same to be true, the suit must be found to be bound to fail. The learned court below has come to the conclusion that the plaintiff has claimed his title on the basis of adverse possession. The submission by Mr Singh, the learned counsel for the petitioners that there is no relevant fact establishing the case of adverse possession cannot be the basis for exercise of jurisdiction under Order 7 Rule 11 C.P.C. as the suit is still to be tried and the parties are still to lead their evidence. In this view of the matter, this Court is not persuaded to conclude that the learned court below has erred in law in rejecting the

prayer of the petitioners has made under order 7 Rule 11 C.P.C.

Accordingly, this revision application is dismissed.

However, as the suit has been filed in the year 2008 and admittedly it is with regard to a claim against the public land, the learned court below is directed to expedite the hearing of the suit and dispose it of preferably within a period of one year from the date of receipt/production of a copy of this order. The parties are directed to cooperate in the disposal of the suit and avoid unnecessary adjournments.

(V. Nath, J)

Nitesh/-

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