

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15121 of 2015

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Md. Akhtar Alam & Ors

.... Petitioner/s

Versus

Binod Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 2 04-12-2015 1. Heard the learned counsel, Mr. Sharda Nand Mishra on behalf of the petitioner on the interlocutory application No.8206 of 2015. At the time of hearing of this interlocutory application which has been filed for stay of further proceeding in title suit in the Court below, the learned counsel for the petitioner submitted that the writ application may also be heard on merit in admission matter. Accordingly, I heard him on merit.
2. It appears that Title suit No.5 of 2015 was filed by the plaintiff respondent in the Court of Munsif valuing the same at Rs.1,10,000/- The defendant petitioner appeared in the case and filed written statement and in the written statement besides taking various objections, it was also stated that the valuation of the suit is not less than 75 lakhs, therefore, the Munsif has got no jurisdiction to decide this issue. Thereafter, petitioner filed an

application for deciding this issue relating to jurisdiction of the Court as preliminary issue. By the impugned order dated 4.6.2015 passed by learned Munsif, Naugachia in title suit No.5 of 2015 has rejected the prayer of the defendant petitioner holding that still no issues have been framed and for deciding this issue, evidence is required.

3. The learned counsel for the petitioner submitted that sale deeds, certificates issued by the Sub Registrar, Bihiari are produced before the Court below and those documents are sufficient to come to the conclusion that the valuation of the suit property is not less than 75 lakhs but the Court below has wrongly rejected the application for deciding this issue as preliminary issue.

4. Order 14 Rule 2 reads as follows :-

‘2. Court to pronounce judgment on all issues :-

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

(a) the jurisdiction of the Court or

(b) a bar to the suit created by any law for the time being in force, and for that purpose

may, if it thinks fit, postpones the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.



5. Now, in view of this provision it was inserted by the amendment in the year 1976 with effect from 01.02.1977, the Courts are required to pronounce Judgment on all issues which is subject to sub Rule 2 of Rule 2 of Order 14. In view of sub Rule (2) where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. Now, therefore, if according to the opinion of the Court, the issues relates to the question of law only then it can be decided as preliminary issue if that issue relates to the jurisdiction of the Court and a bar to the suit created by any law for the time being imposed. So far this issue is concerned, the Court below has recorded clear finding that without evident, the point raised by the learned counsel for the petitioner cannot be decided. Now, therefore, this question is mixed question of law and fact.

6. In view of the above position in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the impugned order cannot be interfered with as the order is within jurisdiction of the Court and it has rightly been exercised.

Accordingly, this writ application is dismissed. Consequently, the interlocutory application is also rejected.

(Mungeshwar Sahoo, J)

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