

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6292 of 2011

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Manorma Devi W/O Ram Kakhan Singh R/O Village-Sewa, P.S.-Gidhaur,
Distt.-Jamui At Present Har Narayanpur, P.S.-Jamui, Distt.-Jamui

....Defendant/Petitioner

Versus

Ganouri Pathak S/O Late Ayodhya Pathak R/O Village- Har Narayanpur,
P.S.-Jamui, P.O.-Choura, Distt.-Jamui

....Plaintiff/Respondent

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Appearance :

For the Petitioner/s : Mr. Arjun Pd. Keshri

For the Respondent/s : Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 25-08-2015 Heard counsel for the petitioner and Mr. Mishra for the respondent.

The defendant of T.S. No. 34 of 2005 filed for declaration of title and possession is aggrieved by the order dated 29.04.2009 passed by the trial court rejecting the preliminary issue framed to consider as to whether the valuation given by the plaintiff in the suit was appropriate/inappropriate. Upon appearance in the suit the defendant filed a petition for deciding as the preliminary issue the correctness or otherwise of the valuation set out by the plaintiff in the plaint. The court initially did not grant relief. Aggrieved thereby, a proceeding was filed in this Court vide C.R. No. 2285 of 2007. This Court by order dated 15.09.2008 directed the trial court to decide the said issue as

preliminary one. Accordingly, the issue was framed. Parties were allowed to adduce evidence, both oral and documentary. Upon consideration of materials brought on record, the trial court by the impugned order rejected the petition of the petitioner.

Counsel for the petitioner made diverse submissions to question the legality of the order, whereas Mr. Mishra supported the impugned order and submitted that the legality of the order shall be considered if the trial court upon conclusion of hearing passes a judgment against the defendant. The order passed by this Court has been carried out by the court by permitting the parties to lead evidence in support of the said point as preliminary issue and recording a finding adverse to the defendant.

This Court in exercise of its writ jurisdiction shall not appraise the reasons assigned by the trial court in doing so particularly when the defendant has a right to question the legality thereof in case the suit is decided against the defendant. Finding no perversity in the order impugned, the application is dismissed.

(Kishore Kumar Mandal, J)

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