

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8956 of 2012

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1. Vishwanath Sah Son Of Late Bhagwan Sah Resident Of Village-Rampur Khorram, P.S.-Marhaura, District-Saran
2. Shiv Shankar Sah Son Of Late Bhagwan Sah Resident Of Village-Rampur Khorram, P.S.-Marhaura, District-Saran

.... Petitioner/s

Versus

Badari Sah Son Of Late Khedan Sah Resident Of Village-Rampur Khorram, P.S.-Marhaura, District-Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

6 24-11-2015 Heard the learned counsel for the petitioners as well as learned counsel for the respondent and also gone through the order impugned. dated 11.2.2012/13.2.2012 passed by the learned lower court in Title Suit No.103 of 2009 rejecting the prayer of the petitioners to decide the instant title suit after framing preliminary issue of res judicata.

2. In order to support such plea, it has been contended on behalf of the petitioners that on earlier occasion Title Suit No.103 of 1986 (Annexure-8) was filed by one Bal



Govind Sah against both the petitioners including the respondent which was dismissed on contest without cost and further, in the aforesaid title suit the defendants (parties of present suit) have raised their plea on the basis of deed dated 20.11.1970. Because of the fact that by considering the case of the defendant, the court had considered existence of aforesaid deed dated 20.11.1970, therefore, the present suit though being contested amongst the defendants of above referred Title Suit No.103 of 1986, be declared to be barred by law of res judicata. In order to substantiate this plea learned counsel for the petitioners has relied upon 1993 (1) PLJR 164.

3. The learned counsel for the respondent opposed the prayer and submitted that the prayer of the petitioner happens to be misconceived in background of the fact that the Title Suit No.103 of 1986 status of both the parties were of defendant and further, the suit was filed by one Bal Govind Sah for declaration of title and confirmation of possession in an alternative for recovery of possession, permanent injunction with regard to the suit property bearing plot no.1167, Khata No.498 measuring an area 6 kathas 14dhurs, which did not happen to be the subject matter of the instant suit because of the fact that from the plaint it appears to

be Khata no.715.0, Survey Plot No.2933- measuring an area 3 ½, Survey Plot No. 2935 – 5 ½ and Survey Plot No.2929 – 3 ½ respectively. Therefore, it has been submitted that plea of res judicata is not applicable.

4. To avoid multiplicity of the suit so many events were there which could be traced out under C.P.C. as res judicata side by side under the Evidence Act the plea of estoppel, waiver and acquiescence. The basic character of all these events happen to be to restrict the parties to raise the plea, subsequently which they either they acknowledged, as well as decided at an earliest. The theme of res judicata is applicable in two ways; the first happens to be the res judicata in terms of so identified under Section 11 of the C.P.C. and the second aspect as constructive res judicata, which found to be impliedly applicable and basically it is found applicable in terms of Section 34 of the Specific Relief Act wherein, the plea once given up, will certainly affect upon the fate of proceeding as will play pivotal role.

5. Admittedly, as per Annexure-8 the suit was brought by Bal Govind Sah with regard to declaration of title and confirmation of possession in an alternative recovery of possession with regard to Survey Plot No.1167 and for that

adjudication was made. No cross objection was there, therefore, there was no space available for judication over deed in question.

6. That being so, neither res judicata nor the theme of constructive res judicata is found coming therefrom.

7. Petition is, accordingly, found devoid of merit and is, accordingly rejected.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

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