

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1406 of 2013

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Jagdish Yadav @ Jagdish Prasad S/O Chhotu Yadav @ Chhotu Singh
Resident Of Mauza Karmu Bigha, P.S- Chabilapur, Post- Mukhtarganj,
District- Nalanda. Petitioner/s

Versus

1. Veer Abhimanyu Kumar.
2. Sikandar Kumar.
3. Veer Kunwar all Minor S/O Kapil Yadav Under Legal Guardianship Of Their Nana (Meternal Grandfather), Kapildeo Prasad S/O Late Narsingh Yadav Resident Of Village- Nehuwapar, P.O- Khera, P.S- Parwalpur, District- Nalanda.
4. Dinesh Kumar.
5. Umesh Kumar.
6. Mukesh Kumar all Minor S/O Mithilesh Yadav Under Legal Guardianship Of Their Nana (Maternal Grand Father) Kapil Dep Prasad S/O Late Narsingh Yadav Resident Of Village- Nehuwapur, P.O- Khera, P.S- Parwalpur, District- Nalanda.
7. Banti Kumar Minor S/O Sanjay Yadav Under Legal Gardin Of His Nana (Maternal Grandfather) Kapildeo Prasad, S/O Late Narsingh Yadav Resident Of Village- Nehuwarpur, P.O- Khera, P.S- Parwalpur, District- Nalanda.
8. Anuj Kumar.
9. Manoj Kumar.
10. Senuj Kumar all Minor S/O Dhuri Yadav Under Guardianship Of Their Nana (Maternal Grandfather) Kapildeo Prasad, S/O Late Narsingh Yadav Resident Of Village- Nehuwapur, P.O- Khera, P.S- Parwalpur, District- Nalanda.
11. Sanjeev Kumar.
12. Ranjeet Kumar.
13. Ajeet Kumar all Minor S/O Mansa Yadav Under Legal Guardianship Of Their Nana (Materlan Grandfather) Kapildeo Prasad, S/O Late Narsingh Yadav Resident Of Village- Nehuwapur, P.O- Khera, P.S- Parwalpur, District- Nalanda.
14. Krishna Yadav.

15. Raj Ballabh Yadav.

16. Binod Yadav all S/O Jagdish Yadav.

17. Shyamdeo Yadav.

18. Nagina Yadav both minor S/O Krishna Yadav.

19. Rakesh Yadav Minor S/O Raj Ballabh Yadav Resident Of Mohalla-
Karmu Bigha, P.S- Chhabilapur, P.O- Mukhtarganj, District- Nalanda.

.....Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 30-11-2015

Heard the learned senior counsel for the petitioner
and Mr. Surendra Kumar, the learned counsel for the respondents.

Assailing the order rejecting the prayer for rejection
of the plaint, the defendant-petitioner in T.S. No. 202 of 2008 has
filed this application under Article 227 of the Constitution of
India.

The basic contention on behalf of the defendant-
petitioner in the suit was that the father of the plaintiff-respondents
was already a party defendant in T.S. No. 144 of 2004 which was
filed by the petitioner for declaration of his title with regard to the
suit property and the said suit was decreed ex parte. It is however
apparent from the materials on record that though the said ex parte
decree was set aside at the instance of the defendant of that suit
after awarding cost but the said cost was not paid and therefore the



said ex parte decree had attained finality. The present suit has been filed by the plaintiff-respondents alleging non-representation of their interest by their father who was defendant in the earlier suit and the prayer has been made for setting aside the earlier ex parte decree on the said ground. The learned court below, after considering the facts and circumstances, has refused to accept the prayer for rejection of the plaint.

The learned senior counsel for the petitioner has submitted that the present suit is barred by res judicata as the issues have already been finally determined in the earlier suit. It has, therefore, canvassed that the learned court below has committed illegality in rejecting the prayer for rejection of the plaint.

The learned counsel for the respondents, however, has supported the impugned order.

After careful consideration of the matter and the submissions on behalf of the parties, this Court comes to the conclusion that the learned court below has not committed any illegality or error of jurisdiction in refusing the prayer as made by the petitioner as the present suit has been filed challenging the validity of decree passed in the earlier suit itself and therefore there is no scope for attracting the bar of res judicata in the present facts.

This Court, therefore, does not find any merit in this writ application, which is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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