

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.112 of 2016

IN

Civil Writ Jurisdiction Case No. 807 of 2016

=====

1.Satyendra Pathak.

2.Devendra Pathak

3.Kavindra Pathak

4.Ravindra Pathak, All sons of Late Gorakh Nath Pathak.

All resident of village Jaso P.S. Buxar (Muffasil) District Buxar.

....Defendants 3rd Party/Petitioners

Versus

Sanjay Pathak, son of Gajadhar Pathak

.....Plaintiff/Opposite Party No. 1

2.Gajadhar Pathak, son of Late Hari Pathak.

3.Godavari Devi, wife if Gajadhar Pathak.

4.Jitendra Pathak.

5.Chhote Pathak both sons of Gajadhar PathakDefendant 1st Party.

6.Mosmat Chandrawati Devi, wife of Late Ram Shibala Pathak.

7.Maya Devi wife of Deepak Shahi & Daughter of Late Ram Shibala Pathak, All (1 to 7) are resident of village Jaso, P.S. Buxar (Muffasil) District Buxar.....Defendant 2nd Party.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Dronacharya, Adv and Mr. Shambhu Sharan Kumar, Adv

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-07-2016

Heard Mr. Dronacharya, learned counsel appearing on behalf of the petitioners.

2. This revision application is being disposed of with the consent of the parties at this stage itself.

3. This revision application has been filed against the order by which the learned court below has rejected the prayer of the present defendant-petitioner for rejection of the plaint under Order 7 Rule 11(A/D) of the C.P.C. The suit has been filed by the plaintiff-opposite party for partition and for declaration that the two sale deeds dated 19.05.1983 and 27.05.1986 are null and void. The defendant appeared and filed a petition praying for rejection of the plaint inter alia on the ground that prior to this a Partition Suit No. 72 of 2008 was filed by Mostt. Chandrawati Devi for partition and in that suit a prayer was made for amendment of the plaint for inclusion of the relief with regard to the two sale deeds as above. It has been further pointed out that after rejection of the prayer for amendment by the trial court the matter came up before this Court at the instance of the plaintiff of that suit but this court by order dated 03.03.2011 (Annexure-1) rejected the application filed under Article 227 of the constitution of India. It has thus been submitted by learned counsel for the petitioners as the plaintiff-opposite party was also a party in that

suit and has supported the case of the plaintiff, the issue with regard to the validity of the sale deeds will operate as res judicata.

4. After considering the submissions and perusal of the impugned order, it transpires that the learned court below has come to the conclusion that there has been no adjudication with regard to the relief relating to the two sale deeds in the earlier suit and therefore has observed that the said issue shall be decided along with other issues and has declined to reject the plaint on that basis. Even otherwise it also transpires that the issue with regard to the two sale deeds as raised in the present suit has not been adjudicated finally and only the prayer for inclusion of that relief by way of amendment has been rejected and the rejection order was affirmed by this Court. It is also apparent from the order of this Court 03.03.2011 (Annexure-1) that the plaintiff-opposite party no. 1 was not heard by this Court and it was only after hearing the petitioner of that application that this court declined to admit the said application.

5. It has been submitted by Mr. Dronacharya, learned counsel for the petitioners that the plaintiff has embarked upon clever drafting by suppressing the fact of rejection of the prayer for amendment in the earlier partition suit (Title Suit No. 72 of 2008) and therefore, the Court cannot shut out its doors to remove





the camouflage and pierce the veil. The reliance has been placed on a decision of this Court in the case of ***Bhagirath Prasad Singh @ Bachcha Babu vs Ram Narayan Rai @ Ram Narayan Singh and Anr 2011(1) BBCJ 457*** in support of the contention that clever drafting cannot be a camouflage for avoiding the repercussions of law. However, the fact is explicit in the present case that the plaintiff-opposite party no. 1 was not the plaintiff in the earlier Partition Suit No. 72 of 2008 and even in that case also the issue of validity of those two sale deeds have not been determined. The learned court below therefore has rightly come to the conclusion that the plaint cannot be rejected on this ground alone and has rightly referred the said issue to be decided at the time of hearing of other issues. This Court does not find any error of jurisdiction or material irregularity in the impugned order dated 08.12.2015. The revision application therefore is dismissed.

6. However, this order shall not prejudice the parties in any manner and the petitioner shall be at liberty to raise his objection at appropriate stage in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.08.2016
Transmission Date	