

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2623 of 2014

=====

1. Baijnath Pandey S/O Late Ram Niranjana Pandey Resident Of Village-
Lodhi, P.O. Moresarai, P.S.- Sasaram, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal, Secretary Land Reforms
Department, Government Of Bihar
2. The Collector Cum District Registrar, Rohtas At Sasaram
3. The District Sub-Registrar, Sasaram
4. Anand Kumar Son Of Ram Chandra Rai Resident Of Village And P.O.
Baraki Akori, P.S. Karagahar, District- Rohtas, Presently Residing At
Village Baraharia Bagh, P.O. Takia Bazar, P.S. Sasaram Town, District-
Rohtas
5. Sadananand Rai Son Of Ram Chandra Rai Resident Of Village And P.O.
Baraki Akori, P.S. Karagahar, District- Rohtas, Presently Residing At
Village Baraharia Bagh, P.O. Takia Bazar, P.S. Sasaram Town, District-
Rohtas

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar

For the Respondent/s : Mr. Gp-22 Gayan Prakash Ojha

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 18-01-2016 Heard learned counsel for the petitioner as well as

learned counsel for the respondents.

This application, under Article 227 of the
Constitution of India, has been filed by the defendant-petitioner
against the order dated 27.09.2013 passed by the Sub-Judge-I,
Sasaram in Title Suit No. 426 of 2005, whereby the court below
allowed the amendment application instead of deciding the
preliminary issue regarding maintainability.

It appears that the suit was filed by the plaintiff for



compulsory registration of sale deed by the defendant. When the application was filed before the Registrar, the plaintiff without awaiting the order of Registrar, filed the present suit. The present petitioner filed an application praying that a preliminary issue regarding maintainability of the suit may be decided. A stand was taken that the suit is not maintainable because subsequent to the filing of the suit, the Registrar has already directed that the sale deed be registered compulsorily and the same has already been registered. At this stage, application for amendment was filed by the plaintiff, whereby the plaintiff sought deletion of the relief claimed for compulsory registration and prayed for registration of the other lands of the defendant. The plaintiff also prayed for recovery of possession of the lands, for which, the sale deed has been compulsorily registered. The petitioner filed application that first maintainability of the suit itself may be decided. The court below by the impugned order held that since the amendment application is filed by the plaintiff, therefore, he allowed the amendment application by the impugned order. The petitioner's application for deciding preliminary issue is still pending.

It appears that a preliminary issue dated 09.08.2007 has been framed on the question of maintainability of the suit. From perusal of the order sheet, it further appears that the court

below heard on this point several dates till the impugned order is passed.

The petitioner filed application under Order 41 Rule 2 C.P.C. for deciding the preliminary issue. Order 14 Rule 2 provides that 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. In view of this Sub-Rule-2, this provision is not a mandatory provision. The discretion has been given to the court to dispose of the suit pronouncing judgment on all issues. However, this Sub-Rule subject to Sub-Rule 2, wherein it is provided that 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 part to the suit created by any law for the time being enforced.

In the present case, it is not the case of the petitioner that the civil court has no jurisdiction to decide the suit. It is not the case of the petitioner that any provision of any law bars the suit. The only point raised by the petitioner is that the suit is not maintainable. In such circumstances, it cannot be said that the point raised by the petitioner for deciding it as preliminary issue is

a pure question of law as provided under Order 14 Rule 2 C.P.C.

In such view of the matter, the court below has rightly held that the amendment application should be considered first and has rightly allowed the amendment application and thus, the impugned order needs no interference in supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J.)

brajesh/-

U			
---	--	--	--