

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11318 of 2014

1. Maheshwar Mishra son of Late Ram Surat Mishra R/o Soti Bheriyahi, P.O. Hardaspur, P.S. Kanti, District - Muzaffarpur

2. Shiwaji Bhagat

3. Binod Bhagat Both sons of late Khakhan Bhagat residents of village - Jhapaha, Tola, Manjhauliya, P.S. Ahiyapur, District - Muzaffarpur

.... Petitioner/s

Versus

1. Suresh Mishra son of late Ram Surat Mishra R/o Soti Bheriyahi, Post Office Hardaspur, P.S. Kanti, District - Muzaffarpur

2. Sri Umeshwar Mishra son of late Ram Surat Mishra R/o Soti Bheriyahi, P.O. Hardaspur, P.S. Kanti, District - Muzaffarpur

3. Dineshwar Mishra son of Late Ram Surat Mishra R/o Soti Bheriyahi, P.O. Hari Daspur, P.S. Kanti, District – Muzaffarpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shyam Sunder Pandey, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-08-2016

Heard Mr. Ashok Kumar Sinha, learned counsel for the petitioners.

Questioning the legal sustainability of the impugned order by which the learned court below has rejected the petition filed by the petitioners praying for analogous hearing of the partition suit no. 431 of 2006 along with Title Suit No. 06 of 2009, the present application under Article 227 of the Constitution of India has been filed.



The matrix of facts as apparent from the averments made in the application as well as from the submissions made by the learned counsel for the petitioners demonstrate that four suits i.e. Partition Suit No. 431 of 2006, Title Suit No. 06 of 2009, Title Suit No. 148 of 2009 and Title Suit No. 647 of 2009 are pending between the parties. The present petitioners who are defendants in all the four suits filed a petition under Section 24 C.P.C. before the learned District Judge praying for analogous hearing of all the four suits. The said prayer was allowed and the four suits were transferred to the same court by the order passed by the learned District Judge on 06.11.2012 in Misc. Case No. 36 of 2011. However, C.W.J.C. No. 6155 of 2013 was filed against the said order passed by the learned District Judge and by order dated 27.06.2013, this application was disposed of by this Court observing that the learned court below would ensure that the proceeding in all four cases are not delayed on the ground of pendency of other cases and would take up such suits first in which the proceeding was at advanced stage and would proceed accordingly so that the disposal of the cases were not delayed. The present petitioners who were respondents in the said application filed a petition for modification of the said order but the same was dismissed as withdrawn by order dated 06.08.2009. Thereafter, the present petitioners filed a petition on 21.01.2014 in T.S. No. 06 of 2009

praying for analogous trial of T.S. No. 06 of 2009 with Partition Suit No. 431 of 2006. By the impugned order the learned court below has dismissed the said petition.

Mr. Sinha, learned counsel for the petitioners has submitted that the order passed by this Court in earlier application i.e. C.W.J.C. No. 6155 of 2013 has been wrongly interpreted by the learned court below as there was no such direction for not hearing the four suits analogously. Learned counsel, however, has accepted the fact that the petitioners' petition for modification of the said order has been dismissed by this Court. It has been contended by learned counsel that the effort should have been made to avoid multiplicity of litigation and in the facts and circumstances of the case, there would be no prejudice to any of the parties if the four suits are analogously decided. It has been also argued that the notice in this application may be issued to the respondents as there may be chances of compromise between the parties. It has been lastly submitted by the learned counsel for the petitioners that in any view of the matter the hearing of Title Suit No. 06 of 2009 may not be stayed but the passing of the judgment therein should be stayed.

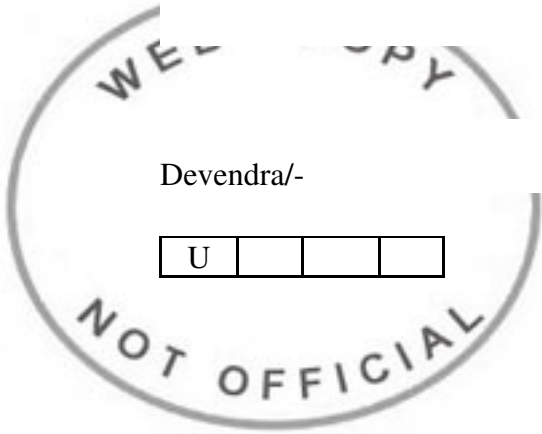
After considering the submissions and the facts and circumstances of the case, it is manifest that earlier the prayer of the petitioners for analogous hearing of all the four suits had been allowed



by the learned District Judge but this Court by its order dated 27.06.2013 passed in C.W.J.C. No. 6155 of 2013 which was filed against the order of the learned District Judge has disposed of the application directing the trial court to ensure the disposal of such suits first in which the proceeding has reached to an advanced stage. The present petitioners who were respondents in the said application before this Court though had filed the petition for modification of the said order but the same has admittedly been dismissed as withdrawn. As such, the direction of this Court for disposal of such suits which have reached to the advanced stage has attained finality between the parties. The fact is also apparent from the impugned order and has not been disputed by the learned counsel for the petitioners that the proceeding of the Title Suit No. 06 of 2009 has reached to an advanced stage where the final argument on behalf of the defendant-petitioners is going on. In this backdrop, the learned court below, after taking into notice the above direction of this Court, has rejected the prayer of the petitioners for analogous hearing of the suit and has directed the petitioners to proceed with the argument in the suit. The submission on behalf of the petitioners with regard to avoidance of multiplicity of litigation and chances of compromise cannot be entertained at this stage in view of the order of this Court in the earlier application as abovementioned. This Court, therefore, is not inclined to

interfere with the impugned order.

The application is, accordingly, dismissed.



(V. Nath, J)

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