

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9529 of 2014

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Ajay Kumar Gupta, Son of Late Ramchandar Prasad Gupta, Resident of Mohalla-Madhampur, P.O.-Basudeopur, P.S.-Kotwali, Town and District-Munger.

....Petitioner.

Versus

Hridaya Narayan Keshri, Son of Late Dev Narayan Keshari, Resident of Mohalla-Gulzar Pokhar, P.S.-Kotwari (Town), P.O. Town and District-Munger.

.....Respondent.

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Appearance :

For the Petitioner/s : Mr. Subhash Chandra Bose

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-06-2016

V.Nath, J.

Heard the learned counsel for the petitioner.

Calling in question the legal acceptability of the impugned order by which the learned court below has turned down the prayer of the defendant-petitioner for holding the suit to be not maintainable and decide the said issue as preliminary issue under Order 14 Rule 2 C.P.C., the present application under Article 227 of the Constitution of India has been filed.

The learned counsel for the petitioner has submitted that in earlier eviction suit the present plaintiff, who was defendant in that suit, had admitted his tenancy over the suit premises and therefore the present suit for declaration of possessory title over the suit

premises and injunction as prayed is not maintainable. It has, therefore, been contended that the prayer of the defendant to dismiss the instant suit as barred by res judicata at the threshold has substance but the learned court below has wrongly rejected the said prayer and refused to try the issue of res judicata as preliminary issue.

After considering the submissions and the materials on record, it is evident that the present suit has been filed by the plaintiff-respondent for declaration of his possessory title over the suit land and for grant of injunction against the defendants from interfering with the possession of the plaintiff. The learned lower court has come to the conclusion that in the earlier eviction suit the issue of title of the parties over the suit land was not directly and substantially in issue rather only the relationship of landlord and tenant has been decided and therefore on that basis the present suit cannot be held to be barred by res judicata. It has been further also held that the bar of res judicata can be tried as an issue in the suit but in the facts and circumstances of the case, the same cannot be tried as preliminary issue for disposing of the suit. This Court has not been persuaded to find that the impugned order suffers from error of jurisdiction or material irregularity warranting interference under Article 227 of the Constitution of India.

This Court therefore holds that the present

application has got no merit and is accordingly dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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