

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9830 of 2014

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Birendra Kumar Singh S/o Late Kamla Singh Resident of Village Barunganj, P.S.
Barun, District Aurangabad (Bihar). Petitioner/s

Versus

1. Hari Mahton S/o Late Tengri Mahton Resident of Village Mastul Barun, P.S.
Barun, District Aurangabad (Bihar).
 2. Narendra Kumar Singh
 3. Satyendra Kumar Singh
 4. Surendra Kumar Singh Sl. No. 2 to 4 S/o Late Kamla Singh Resident of Village
Barunganj, P.S. Barun, District Aurangabad (Bihar)..... Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-06-2016

Heard Mr. Mrigendra Kumar, learned counsel for the
petitioner.

The defendant is the petitioner in this application and
has invoked the jurisdiction under Article 227 of the Constitution of
India against the impugned order by which his prayer for deciding
the question of maintainability of the suit as preliminary issue
under Order 14 Rule 2 C.P.C. has been refused.

The suit has been filed by the plaintiff for demarcation
of the suit property in accordance with the sale deed of the plaintiff
and the defendants as mentioned in schedules-I and II of the plaint.
A Pleader Commissioner was appointed who, according to the
submission by the learned counsel for the petitioner, has also

reported that the land as claimed by the plaintiff does not exist on the spot rather it is a Rasta. The defendants raised the objection that as the plaintiff did not seek the relief for declaration of title and possession over the suit land, this suit as framed cannot proceed and accordingly further prayed for trial of the said issue as preliminary issue.

The learned court below has come to the finding that only because the plaintiff has not sought relief for declaration of his title the suit cannot be held to be not maintainable for the said reason as the plaintiff will have to face the consequences in accordance with law. The learned court below has further also disposed of the petition filed by the petitioner directing the issue of maintainability of the suit to be considered along with the other issues arising in the suit between the parties at the time of final disposal of the suit.

This Court after considering the submissions and the materials on record, does not find that any illegality or material irregularity has been committed by the learned court below in passing the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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