

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9917 of 2015

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Badri Giri Son of Late Narain Giri, resident of Bakua, P.S. - Naubatpur,
District - Patna.

.... Petitioner

Versus

1. Suresh Prasad,
2. Ram Chandra Das,
3. Chhote Lal
4. Amit Kumar All Sons of Late Ram Lakhan Ravidas @ Ram Lakhan
Chamar, All resident of village- Bakua, P.S. - Naubatpur, District - Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 26-04-2016 Heard learned counsel, Mr. Gauri Shankar Prasad,

for the petitioner.

By the order dated 08.04.2015, the learned
Subordinate Judge-IV, Danapur in Title Suit No. 91 of 1999
rejected the application filed by the petitioner under Order 7 Rule
11 (d) of the Code of Civil Procedure.

It appears that the Suit was filed by the plaintiff-
respondents for declaration of title and further for declaration that
the ex-parte judgment and decree passed in Title Suit No. 33 of
1978 is illegal and not binding on the plaintiff. The defendant-
petitioners appeared and filed application for rejection of the
plaint under Order 7 Rule 11(d) of the Code of Civil Procedure

on the ground that the question of title has already been decided in Title Suit No. 33 of 1978. The Court below by the impugned order held that the judgment and decree passed in Title Suit No. 33 of 1978 is itself in question in the present Suit. Therefore, the plaint cannot be rejected.

Order 7 Rule 11(d) provides that the plaint can be rejected where the Suit appears from the statement in the plaint to be barred by any law. Therefore, while considering an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, the Court is only required to see the averments made in the plaint and except that averment the defense case cannot be looked into. In the present case, it is admitted fact that the present suit has been filed for declaration that ex-parte judgment and decree passed in Title Suit No. 33 of 1978 is illegal. Therefore, when the relief itself is claimed against the judgment and decree, in no case, it can be said that the present Suit is barred by principles of *res-judicata*. It is settled principle of law that the test is as to whether if the averments made in the plaint are taken to be correct in their entity, the decree would be passed. In order to ascertain whether the plaint is barred under any law, the Court is not required to make an elaborate enquiry into complicated questions of law or fact.

In my opinion, the learned Court below has rightly rejected the application. Therefore, the impugned order cannot be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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