

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.102 of 2013

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1. Janeshwar Sharma S/O Late Kamal Sharma Resident Of Village Kharsa Nath, Police Station Mehendiya, District Arwal.

2. Sudarshan Sharma S/O Late Kamal Sharma Resident Of Village Kharsa Nath, Police Station Mehendiya, District Arwal.

.... Defendants/Petitioners

Versus

1. Parsuram Sharma S/O Late Nunu Sharma Resident Of Village Puran, P.S. Karpi, District Arwal.

2. Bishram Sharma S/O Late Nunu Sharma Resident Of Village Puran, P.S. Karpi, District Arwal.

.... Plaintiffs/Opposite Parties

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Appearance :

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

For the Respondent/s : Mr. Shiv Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

4 19-01-2016

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Calling in question the legal sustainability of the impugned order, by which the court below has refused to allow the prayer of the defendant-petitioner for framing the issue of limitation as preliminary issue in the suit, the present revision application has been filed.

3. The facts are not in dispute that the plaintiff has approached the registering authority under various provisions of the Registration Act for registration of the sale deed said to have been executed by the defendant in pursuance to the agreement of sale, and thereafter also for compulsory registration of the said sale deed. It is also not in dispute that the matter had at one stage reached to this court also. The suit thereafter has been filed in the year 2012 praying for specific performance of contract.

During the pendency of the suit, the defendants filed a petition under Order XIV Rule 2 of the C.P.C., praying for trial of the issue of limitation as preliminary issue. By the impugned order, the learned court below has declined to accede to the prayer of the defendants.

4. Learned counsel for the petitioners has accepted that as per the averments made in the plaint, the plaintiff had approached the registering authority and also this Court for the relief of registration of the sale deed. It has, however, been contended that the suit for specific performance of contract in view of Article 54 of the Limitation Act is to be filed within three years as envisaged in the said provision. It is well settled by now that the issue of limitation is a mixed question of law. The averments made in the plaint is still to be established on the basis of the evidence to be adduced by the parties to the suit on various issues arising in the suit. This Court, therefore, does not find that the trial court has committed any error in turning down the prayer of the defendant-petitioners for framing the issue of limitation as a preliminary issue.

5. This writ application is, accordingly, dismissed.

(V. Nath, J)

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