

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4105 of 2014

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Paras Nath Singh

.... Petitioner/s

Versus

Vimal Kumar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-01-2016 Heard the learned counsel for the petitioner on the interlocutory application No.145 of 2015.

This is a substitution application filed by the legal representatives of the deceased sole petitioner.

In view of the submission made by the learned counsel for the petitioner, this substitution application is allowed and the legal representative of the deceased sole petitioner are substituted in place of the deceased after deleting his name. They have already filed Vakalatnama.

Heard the learned counsel for the petitioner. The application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 30.01.2014 passed by learned Sub Judge-III Siwan in Title Suit No.258 of 1975 whereby the Court below directed that the issue as to whether the suit is barred under Section 46 of the Evacuee Property Act shall be considered along with other

issues.

The learned counsel for the petitioner relying on various issues submitted that when the issue relates to the bar of suit as provided under Order 14 Rule 2 sub Rule 2 clause (b) CPC, the same issue must be decided as preliminary issue. From perusal of the impugned order, it appears that the Court below has considered all these points which are being raised by the learned counsel before this Court. The Court below by the aforesaid order has held that since question which is being raised cannot be decided without evidence, the same issue shall be decided along with other issues.

Order 14 Rule 2 CPC provides that where issues both of law and of fact arises in the same suit and the Court is on opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) jurisdiction of the Court or (b) a bar to the suit created by any law for the time being enforced. Therefore, in view of this provision, it is not a mandatory provision. The Court is to decide if it relates to the pure question of law only. In the present case, the plaintiff respondent has filed the suit for declaration of his title over suit property narrating the story as to how he is claiming title over suit property. The plaintiff also pleaded that the suit property was never declared as evacuee property and the sale deed of the defendant is void ab initio.

So far the declaration of title is concerned, the Hon'ble Supreme

Court in the case of *Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf A.I.R. 2010 SC 2897*, the Hon’ble Supreme Court has held that ‘the jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Court. Any such exceptions cannot be readily inferred by the Courts. In the present case, the plaintiff is praying for declaration of his title. Now, therefore, so far this relief is concerned, except Civil Court, no other Court or tribunal are authorized to grant such relief claimed by the plaintiff. So far the objection that the suit is barred under Section 46 of Evacuee Property Act is concerned, it is dependent on the evidence and, therefore, it is not a pure question of law. In such circumstances the Court below held that the same shall be decided only in other issue.

Therefore, the impugned order needs no interference under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)