

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9281 of 2015

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Ram Kailash Yadav & Anr

.... Petitioner/s

Versus

Ganesh Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 14-09-2016

Heard learned counsel, Mr. Binod Singh, appearing for the petitioners and learned counsel, Mr. A.K. Rai, appearing for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 21.04.2015 passed by the Munsif- IVth, Chapra in T.S. No. 07 of 2015, whereby the court below instead of admitting the plaint held that he had no jurisdiction to entertain the suit and directed the petitioners to approach the appropriate forum.

2. Learned counsel, Mr. B.K. Singh, for the petitioners submitted that earlier the judgment and decree was passed in Title Suit No. 78 of 2007 without giving sufficient opportunity to the plaintiffs-petitioners and the said judgment and decree was obtained by the respondents by playing fraud. Therefore, the plaintiffs-petitioners filed present T.S. No. 07 of 2015 for setting

aside the aforesaid judgment and decree on the ground of fraud. The learned court below, by the impugned order, has held that he has no jurisdiction to entertain the suit.

3. On the other hand, learned counsel, Mr. Rai for the respondents submitted that in the earlier suit, the present plaintiffs-petitioners had appeared and had also filed written statement and thereafter did not participate. Therefore, the court below has decided the suit *ex-parte*. In such circumstances, the petitioners instead of filing the appeal have filed the present suit. In view of this, the learned court below has rightly held that the court has no jurisdiction to entertain the suit.

4. Section 9 of the Civil Procedure Code reads as follows;

“9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

In view of this provision, the civil courts have the jurisdiction to try/take cognizance of any civil suits within the territorial and pecuniary jurisdiction of the court. If the suit is barred, then only that cannot be tried by the civil court. In the

present case, the plaintiffs-petitioners filed T.S. No. 07 of 2015 for setting aside the judgment and decree passed in T.S. No. 78 of 2007 on the ground of fraud.

5. The Hon'ble Supreme Court in the case of *S.P Chengalvaraya Naidu Vs. Jagannath* reported in *AIR 1994 SC 853* has held that the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. It can be said without hesitation that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

6. In the present case, the plaintiffs' allegation is that the judgment and decree was obtained by playing fraud. The Hon'ble Supreme Court in the aforesaid decision referred to above held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. When the plaintiffs-petitioners are filing the suit on the ground of fraud, the question of fraud has to

be gone into as it depends on the facts, which are to be established on the basis of evidence.

7. This Court also in *AIR 2005 Patna 149* has held that fresh title suit challenging *ex-parte* decree in earlier suit on the ground of fraud is maintainable.

8. In view of the above facts and circumstances of the case and also the settled principles of law, in my opinion, the court below, by the impugned order, has refused to exercise a jurisdiction vested in it by law on non-existent ground. Therefore, this writ application is allowed and the impugned order dated 21.04.2015 passed in T.S. No. 07 of 2015 by Munsif-IV, Chapra is, hereby, set aside.

9. The matter is remanded to the court below for proceeding ahead to decide the suit on merit in accordance with law.

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(Mungeshwar Sahoo, J)