

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5466 of 2014

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Tara Devi & Ors

.... Petitioner/s

Versus

Rameshwar Sharma & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Narayan Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

7 12-02-2016 **1.** Heard the parties.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff petitioner for setting aside the order dated 20.01.2014 passed by Munsif Ist, Begusarai in Title Suit No.4 of 2012 whereby the learned Munsif while hearing the application under Order VII Rule 11 CPC framed three issues for deciding it as preliminary issue under Order XIV Rule 2 CPC.

3. It appears that the title suit No.4 of 2012 was filed by the plaintiff for declaration of title and cancellation of three sale deeds executed in favour of the defendants. The defendants filed written statement and thereafter application under Order VII Rule 11 was filed for deciding the issues regarding maintainability of the suit, the question of limitation and arbitrary valuation of the

suit land and then to reject the plaint.

4. Order XIV Rule 2 mandates that ‘the Court shall pronounce Judgment on all issues. This mandate is subject to sub Rule 2 of Rule 2 which provides that where issues both of law and of fact arise in the same suit and the Court is of 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) the jurisdiction of the Court (b) a bar to the suit created by any law for the time being in force.’

5. In view of this sub Rule, the Court may decide the issue of law only if it relates to the jurisdiction and bar. In the present case, the question about maintainability of the suit is not a question of law. Likewise the question of limitation is also not a pure question of law. These questions depend on the evidence and so far the third issue which has been framed relates to the arbitrary valuation of the suit land is concerned, is also a pure question of fact. Therefore, none of the issues framed by the Court below relates to the pure question of law and all these issues depends on facts. In my opinion, therefore, the Court below has exercised a jurisdiction not vested in it by law and that the jurisdiction has been exercised in the manner not permitted by law.

6. Thus, this writ application is allowed and the impugned order is set aside. The Court below shall proceed according to law.

(Mungeshwar Sahoo, J)

Sanjeev/-

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