

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8885 of 2014

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1. Mukesh Sahu @ Mukesh Sah son of Jagdish Sahu, Resident of Village- Jafratole,
Ramnagar, Police Station- Bisfi, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Madhubani
2. The Additional Collector, Madhubani
3. The Land Reforms Deputy Collector, Benipatti, Madhubani
4. Ghuran Yadav son of Late Jai Lal Yadav, Resident of Village- Jafratole,
Ramnagar, Police Station- Bisfi, District- Madhubani
5. Raj Narayan Yadav son of Late Mahabir Yadav, Resident of Village- Jafratole,
Teghara, Police Station- Bisfi, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha, Adv
For the Respondent/s : GA10- Smt.Nividita Nirvikar and Mr. Avinash
Kumar AC to GA 10.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-05-2016

Heard learned counsel for the parties.

2. The legal acceptability of the impugned order has been called in question by the petitioner in this application filed under Article 227 of the Constitution of India by which the learned court below has turned down the prayer on behalf of the petitioner for recall of the order dated 05.07.2013 after hearing the suit on the point of Admission.

3. The learned counsel for the petitioner at the outset



has submitted that the suit filed by the plaintiff-respondent is not maintainable in view of the provision as contained in Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 as well as the remedy available to the plaintiff-respondent to prefer an appeal before the competent authority against the order passed in a pre-emption proceeding under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961. It has been therefore canvassed that the court below ought to have recalled the order granting the status quo as prayed by the plaintiff and ought to have dismissed the suit as not maintainable.

4. After considering the submissions and the materials on record, it is manifest that the petition filed by the petitioner as contained in Annexure-3 contains the only prayer to recall the order dated 05.07.2013 and for hearing of the suit on the point of admission. It is not in dispute that the petitioner has not filed any petition for rejection of plaint under Order 7 Rule 11(d) CPC or for deciding the issue of maintainability of the suit as barred by any law as preliminary issue envisaged under Order 14 Rule 2 CPC. It is, therefore, clear that the prayer made by the petitioner in his petition was misconceived and the learned court below therefore has not committed any error of jurisdiction or illegality in passing the

impugned order. This application therefore, is dismissed with liberty to the petitioner to seek the remedy available to him in accordance with law with an observation that any finding recorded in the impugned order shall not prejudice the case of the petitioner in challenging the maintainability of the suit or jurisdiction.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A
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