

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.358 of 2016

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1. Dilip Kumar Upadheya
 2. Sandeep Kumar Upadheya
 3. Pradeep Kumar Upadheya All S/o Late Bharat Prasad Upadheya
 4. Most Meera Upadhey @ Meera Devi W/o Late Bharat Prasad Upadheya
All R/o Vill Harinagar Murili Nepali Tola P.S. Ramnagar Dist W.
Champaran.
 5. Smt Saroj Upadheya D/o Late Bharat Prasad Upadheya, W/o Balchand
Arazat R/o Birat Nagar P.S. Birat Nagar Dist Birat Nagar Nepal

.... Appellant/s

Versus

1. Dhananjay Kumar Singh late Praduman Singh null
2. Kirian Kumari d/o late Praduman Singh
3. Mantosh Kumar s/o late Praduman Singh Respondent no 2 & 3 are minor
and under natural guardianship of their elder brother Dhananjay Kumar
Singh All r/o Sarhatwa P.S. Ramnagar Dist W. Champaran
4. Sanjay Kumar Singh
5. Mritunjay Kumar Singh both s/o late Praduman Singh Both r/o Sarhatwa
P.S. Ramnagar Dist E. Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhannjay Kumar No 2

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-08-2016 Heard Mr. Umakant Shukla, learned counsel for the
petitioner. It appears that the plaintiff/respondent filed Title Suit
No. 37 of 2014 for declaration of title and confirmation of
possession.

In the said suit the present defendant/petitioner
appeared and filed written statement denying the case of the
plaintiff and they claimed title on themselves.

Subsequently an application under Order 14 Rule 2



CPC, and under Section 11 of the CPC was filed by the defendant/petitioner for deciding the question of res-judicata as preliminary issue. According to learned counsel for the petitioners they had already earlier filed a suit under Section 6 of the specific relief act for recovery of possession of the suit property which was decreed therefore, this suit filed by the plaintiff/respondent is barred by res judicata.

The trial court by the impugned order held that the suit filed under Section 6 of the specific relief act has got nothing to do with the question of title involved in this present suit and accordingly rejected the application filed by the petitioner under Order 14 Rule 2 of the CPC read with Section 11 of the CPC.

The learned counsel Mr. Umakant Shukla, for the petitioner submits that in the year 1925 there was suit between the representative of Bettiah Raj and Ram Nagar Raj, wherein it has been decided that the suit property belonged to Bettiah Raj and the petitioners are the purchaser from the settlee of Bettiah Raj as such the plaintiff who are claiming title on the ground that they are decedents of the settlee of Ram Nagar Raj, is barred by res-judicata.

From perusal of the impugned order it appears that this point was neither raised in the application filed by the

petitioner in the court below nor this was argued before the court below. However, this question even if it is raised or even if it is stated that it was raised in the written statement can not be decided as preliminary issue as after amendment of the Code of Civil Procedure the court is not obliged as a rule to decide the disputed questions of fact as preliminary issue. The question which is being raised before this court is dependant on the evidence and therefore, this question can not be decided as preliminary issue. So far as in the present case is concerned the learned court below has rightly held that the suit filed under section 6 of the specific relief act has got nothing to do with the present suit wherein the question of title is involved.

In the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order and accordingly, this Civil Miscellaneous Application is dismissed.

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(Mungeshwar Sahoo, J)