

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6280 of 2015

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Shankar Rai @ Shiv Shankar Prasad & Ors

.... Petitioner/s

Versus

Shankar Lal Prajapati & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamala Kant Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 25-01-2016 1. Heard the learned senior counsel, Dr. Uma Shanker Prasad, on behalf of the appellant.

2. By the impugned order dated 27.08.2014, the learned Sub Judge VIII, Patna in Title Suit No.377 of 1997 rejected the application filed by the defendant petitioner under Order VII Rule 11 CPC.

3. The learned senior counsel submitted that earlier the petitioners had filed eviction suit No.125 of 1965 for eviction of the respondents under the Bihar Building (Lease, Rent & Eviction) Control Act on the ground of default. In the said eviction suit, the defendants respondents set up their title and the question of title was decided by the High Court and eviction decree was granted. The decree of the High Court was challenged before the Supreme Court. The Supreme Court also dismissed the same and thereafter



the present plaintiff of title suit No.377 of 1997 have filed this present suit for declaration of title. According to the learned counsel, since the question of title has already been decided up to the Supreme Court and the Supreme Court dismissed the appeal, the plaintiff has no cause of action for the present suit but the Court below erroneously considered paragraph 21 of the present plaint and held that cause of action has been disclosed in the plaint. The learned senior counsel also submitted that the present suit is also hit under Article 137 and 142 of the Constitution of India because the matter has already been decided earlier which reached the finality.

4. Secondly, the learned senior counsel submitted that since it has reached the finality, therefore, also the present suit barred by res judicata.

5. So far Order VII Rule 11 Clause (a) CPC is concerned, the plaint can be rejected where it does not disclose a cause of action. Cause of action is said to be bundle of fact which entitles the plaintiff to claim the relief. In the present case from perusal of the plaint, it appears that the plaintiff has set up the case of his title on the ground of settlement by the ex.landlord and thereafter has narrated the subsequent suits filed by the petitioner for eviction of



the plaintiffs. It may be mentioned here that the plaintiff has got no cause of action is different matter. The question whether the plaint disclosed a cause of action is also different matter. If the plaint does not disclose a cause of action that can be considered while deciding an application under Order VII Rule 11 CPC. So far the question as to whether the plaintiff has the cause of action or not that can be decided only after evidences of both the parties are adduced. In the present case, the main defence and the submission of the learned senior counsel is that the question of title has already been decided in the earlier suit. So far this question is concerned, it is admitted fact that the earlier suit was filed under the BBC Act. The eviction decree was passed under the BBC Act.

6. The Hon'ble Supreme Court in the case of ***Rajendra Tiwary Vs. Basudeo Prasad AIR 2002 SC 136*** held that *'it is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under Clause (c) and (d) of sub-Section 1 of Section 11 of the Act, Courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of 'landlord and tenant'*

should exist. The scope of the enquiry before the Courts was limited to the question : as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant. Having regard to width of the definition of the terms 'landlord' and 'tenant' in Clause (f) and (h) respectively of Section 2 of the Act.

In such view of the matter, if any question of title which has been decided by the High Court or any Court under the Bihar Building (Lease, Rent & Eviction) Control Act will be deemed to be the decision rendered in exercise of jurisdiction under the Bihar Building (Lease, Rent & Eviction) Control Act. The question of title will never operate as res judicata.

7. Therefore, this suit which has been filed by the plaintiff for declaration of title will never be barred either under Section 11 of CPC nor the plaint can be rejected under Order VII Rule 11(d) CPC. Therefore, the Court below has rightly rejected the application. In such circumstances, the same cannot be interfered with in exercising of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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