

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.153 of 2016

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Jagarnath Mahto, Son of Late Deo Nandan Mahto, Resident of Village-Goshaipur Lohashi, P.S.-Belsand, District-Sitamarihi. At present resident of Dumara, P.S.-Dumra, District-Sitamarihi.

.... Petitioner

Versus

1. Ram Chandra Mahto, Son of Late Dwarika Mahto, Resident of Village-Goshaipur Lohashi, P.S.-Belsand, District-Sitamarihi.
 2. Chandeshwar Mahto, Son of Late Jaishi Ram Mahto.
 3. Upendra Mahto, Son of Late Jaishi Ram Mahto.
 4. Most Anarkali Devi, Wife of Late Bindeshwar Mahto.
 5. Mukesh Kumar, Son of Late Bindeshwar Mahto.
 6. Rishikesh Kumar, Son of Late Bindeshwar Mahto.
 7. Brajesh Kumar, Son of Late Bindeshwar Mahto.
- Opposite Party Nos. 2 to 7 Resident of Village-Goshaipur Lohashi, P.S.-Belsand, District-Sitamarihi.
8. Ram Ekbal Mahto, Son of Late Ramdeo Mahto.
 9. Baidya Nath Mahto, Son of Late Ramdeo Mahto.
 10. Amar Nath Mahto, Son of Late Ramdeo Mahto.
 11. Most. Radhika Devi, Wife of Late Ramdeo Mahto.
- Opposite Party Nos. 8 to 11 Resident of Village-Goshaipur Lohashi, P.S.-Belsand, District-Sitamarihi
- Opposite Parties.

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr.Thakur, learned counsel appearing for the petitioner.

By the impugned order, the learned court below has rejected the petition filed by the defendant-petitioner praying for rejection of plaint under Order 7 Rule 11 C.P.C.

The submission on behalf of the petitioner is that the learned court below has wrongly held that the issue of res judicata



cannot be decided as a preliminary issue. From the submissions made on behalf of the petitioners, however, it transpires that the plea pertaining to res judicata as raised by the defendant-petitioner in fact relates to the plea of constructive res judicata. The prayer as made by the defendant-petitioner, in the petition for rejection of plaint on this score has rightly not been granted by the learned court below. It needs no effort to come to the conclusion that the plea of constructive res judicate has always been a mixed question of law and facts.

This Court, therefore, does not find merit in this revision application, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2017
Transmission Date	

