

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.2 of 2014

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1. Md. Abdul Manan S/O Late Haji Abdul Latif Resident Of Mohalla Mohiuddinpur, Police Station Habibpur, District Bhagalpur, Presently Residing At Ashiana Nagar Colony, Quarter No. Y/2, Police Station Shashtrinagar, District Patna.
 2. Bibi Rashida Widow Of Late Md. Abdul Kalam Resident Of Mohalla Mohiuddinpur, Police Station Habibpur, District Bhagalpur.
 3. Md. Shahnawaz S/O Late Md. Abdul Kalam Resident Of Mohalla Mohiuddinpur, Police Station Habibpur, District Bhagalpur.
 4. Md. Sarfaraz Minor S/O Late Md. Abdul Kalam Under The Guardianship Of Their Mother Namely Bibi Rashida Resident Of Mohalla Mohiuddinpur, Police Station Habibpur, District Bhagalpur.
 5. Tabassum Minor D/O Late Md. Abdul Kalam Under The Guardianship Of Their Mother Namely Bibi Rashida Resident Of Mohalla Mohiuddinpur, Police Station Habibpur, District Bhagalpur.

.... Petitioners

Versus

M. Abdul Rahman S/O Late Haji Abdul Latif Resident Of Mohalla Mohiuddinpur, Police Station Hbibpur, District Bhagalpur.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. KHATIM REZA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-10-2016

Heard Mr. Khatim Reza, learned counsel

appearing for the petitioners.

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

The plaintiff filed the suit for declaration of his status as a cosharer alongwith the defendants in the suit property.



Further the relief has been prayed for restraining the defendants from taking any step for eviction against the plaintiff from the suit land by illegal means. The defendants filed the petition praying for rejection of plaint on the ground that since the sale deed for the suit land exclusively stands in the name of the defendants, the suit is barred by the provisions of Benami Transaction (Prohibition) Act, 1988 and by the principles pertaining to the Hanfi School of Mohammadan Law which does not envisage the joint holding of the property.

The learned court below after hearing the parties has rejected the said petition.

Mr.Reza, learned counsel appearing for the petitioners, has firstly submitted that in view of the decision of the apex court, the bar of the suit by the provisions of Benami Transaction (Prohibition) Act is not being pressed. However, the learned counsel has emphatically submitted that the relief sought by the plaintiff for declaration of his status as a cosharer of the suit property alongwith the defendants is clearly against the established rules of Hanfi School of Mohammadan Law. It has been canvassed that according to the case of the plaintiff itself the sale deed of the suit property stands in the name of the defendants, though, it has been alleged that the grandfather of the plaintiff and the defendants purchased the suit property in the name of the defendants. It has been argued therefore



that there is no scope of joint ownership under the said Hanfi School of Mohammadan Law and therefore the plaintiff is not entitled to relief for declaration of his status as joint title holder of the said property. The learned counsel, therefore, has submitted that the learned court below has committed error of jurisdiction in turning down the prayer on behalf of the defendant-petitioner for rejection of the plaint.

After considering the submissions and perusal of the impugned order, it is manifest that the suit has been filed by the plaintiff, firstly, for the relief of declaration of his status as joint title holder of the suit property alongwith the defendants. However, another relief has been prayed for restraining the defendants from evicting the plaintiff from the suit property by illegal means. It is now well settled that while considering the prayer for rejection of plaint under Order 7 Rule 11 C.P.C, the averments made in the plaint are to be taken as correct. In the present case, the plaintiff has asserted to be in possession over the suit property. The said assertion, if taken to be correct, will certainly entitle the plaintiff to claim for the relief for restraining the defendants for evicting him from the suit property by illegal means. It is, therefore, obvious that the plaint could not have been rejected as prayed by the defendants under the provisions of Order 7 Rule 11 C.P.C. With regard to the first relief regarding the declaration of status of joint title holder, the learned court below has



directed the said issue to be considered after the parties lead evidence.

In the aforesaid background, this Court therefore, does not find that the learned court below has committed error of jurisdiction and illegality in passing the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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