

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8507 of 2014

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Nasruddin Mian Son of Late Hanif Mian Resident of Village - Dewaria,
P.O. + P.S. Kopa, District – Saran Petitioner.

Versus

1. Ashik Mian
 2. Khalik Mian Both are sons of Sadik Mian
 3. Anwar Hussain Son of Late Safik Mian
 4. Ahmad Mian Son of Late Safik Mian
 5. Nasib Mian
 6. Nabad Mian Both are sons of Late Rafik Mian All are residents of
Village - Dewaria, P.O. + P.S. Kopa, District - Saran
 7. The State of Bihar through Collector, Saran Respondents.
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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary
For the Respondent/s : Mr. Dhurjati Kr Prasad

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 03-03-2016

Heard the learned counsel for the petitioner.

The legal sustainability of the impugned order, by which the learned court below has turned down the prayer made on behalf of the defendant-petitioner for considering the issue of maintainability of the suit in view of the bar under Section 18 of the Bihar Privileged Persons Homestead Tenancy Act as preliminary issue observing that the said issue regarding the maintainability shall be considered alongwith the other issues, has been questioned in this application under Article 227 of the Constitution of India.

The fact is not in dispute that the plaintiff-respondents have filed the suit praying for declaration of their title and further for declaration that the settlement in favour of the

defendant no.1 is illegal and without jurisdiction and the prayer has also been made to cancel the settlement. The petition was filed on behalf of the defendant praying for determination of the issue of maintainability as preliminary issue stating that the suit was barred under Section 18 of Bihar Privileged Persons Homestead Tenancy Act. The learned court below, by the impugned order, has rejected the said prayer and has observed that the issue of maintainability of the suit as raised shall be considered alongwith other issues.

After considering the submissions and the materials on record, this Court finds that the purcha granted to the defendant no.1 has been challenged by the plaintiffs on various grounds including the ground of fraud and being without jurisdiction. The allegations made by the plaintiffs are still to be established by evidence. It has thus rightly been held by the learned court below that the issue of maintainability of the suit shall be considered alongwith other issues. This Court therefore does not find any reason to interdict the impugned order.

The writ application is accordingly, dismissed.

(V. Nath, J)

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