

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2392 of 2014

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Ram Naresh Singh

.... Petitioner/s

Versus

Chandrika Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Man Bansh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 22-01-2016 **1.** Heard the learned counsel, Mr. Pramod Man Bansh, for the petitioner.

2. The learned Court below by the order dated 24.09.2013 passed by Addl. District Judge Vth, Begusarai and Title Appeal No.7 of 1981 rejected the application filed by the petitioners to return the Memo of appeal to the appellant respondent for proper presentation before the appropriate forum.

3. From perusal of the impugned order, it appears that the plaintiff filed the suit for declaration of title valuing the suit at Rs.9100/-, the defendant raised the question regarding the valuation of the suit property. In the Judgment, the Court below while deciding issue No.6 held that the valuation of the suit property is Rs.2,95,000/-. Thereafter, the plaintiff filed appeal before the lower appellate Court valuing the appeal at Rs.9100/-



and challenged the finding of the issue of valuation decided by the Court below. Earlier the petitioner filed application before the lower appellate Court praying for return of the Memo of appeal for proper presentation on the ground that the Court below has decided the valuation to be Rs.2,95,000/- on the basis of the same the lower appellate Court returned the Memo of appeal. The plaintiff thereafter filed revision before the High Court. The High Court set aside the order of the appellate Court and directed the appellate Court to decide the appeal according to law. In the year 1984 itself, in the meantime, the appeal was proceeding in the Court below. Thereafter, fresh application was filed by the petitioner praying for the same relief to return the Memo of appeal. By the impugned order, the Court below has rejected the said prayer on the ground that the High Court has already set aside the order passed by the appellate Court earlier in the year 1984 for returning the Memo of appeal for proper presentation.

4. It is admitted fact that the plaintiff valued the suit at Rs.9100/-. The issue regarding valuation was decided by the Court below in issue No.6. This issue of the lower Court, i.e., issue No.6 itself is issue before the lower appellate Court, i.e., it is challenged before the lower appellate Court.

5. It is settled principle of law that the forum will not be changed on the finding of the trial Court on any issue. Further admittedly, the appeal is pending before the lower appellate Court. Even if now Memo of appeal will be returned, it will not be presented before the High Court because today existing law is that the pecuniary appellate jurisdiction of the Addl. District Judge is raised to Rs.10 lakhs. Now, therefore, even if Memo of appeal is returned, then it will be refilled there.

6. In view of the above facts and circumstances of the case, since the finding of the valuation matter is also in issue before the lower appellate Court, the same cannot determine the forum of appeal as such no case for interference under Article 227 of the Constitution of India is made out. Thus, this writ application is dismissed.

7. The Court below shall endeavour his best to expedite the appeal itself considering the age of the appeal.

(Mungeshwar Sahoo, J)

Sanjeev/-

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