

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19904 of 2010

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1. Smt. Shanti Devi, W/O Late Arjun Prasad Kesari, R/O Mohalla- B.N. Jha Road, P.S.- Kotwali, Distt.- Gaya
 2. Smt. Veena Keshri @ Beena Keshari, W/O Sri Sanjay Kumar Kesari, R/O Mohalla- B.N. Jha Road, P.S.- Kotwali, Distt.- Gaya
 3. Smt. Anuradha Keshri, W/O Sri Ajay Kumar Kesari, R/O Mohalla- B.N. Jha Road, P.S.- Kotwali, Distt.- Gaya
 4. Smt. Indu Keshri, W/O Sri Abhay Kumar Kesari, R/O Mohalla- B.N. Jha Road, P.S.- Kotwali, Distt.- Gaya

.... Petitioners

Versus

Sri Lakhan Lal, S/O Late Doman Lal, R/O Mohalla- Purani Godown, P.S.- Kotwali, Distt.- Gaya, At Present Residing At Opposite Of Magadh Khadya Bhandar, Near Jain Transport, Tekari Road, Purani Godown Lane, P.S.- Kotwali, Distt.- Gaya

.... Respondent

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Appearance :

For the Petitioners : Mr. Anil Kumar Sinha, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-08-2016

Heard learned counsel for the petitioner. Gone through the order impugned dated 06.09.2010 passed by Sub-Judge 1st, Gaya in Title Suit no. 313 of 2010.

Two kinds of options are available before the learned Lower Court after filing of a plaint. The first one is that after perusal of the recital of the plaint, the relief, cause of action, the Court may feel jurisdictional incompetence whereupon a direction could be given at the end of the Court to the plaintiff to present the same before the competent court in terms of Order VII Rule 10 of the Code of Civil Procedure with a subsequent direction in terms of Order VII Rule

10 A of the Code of Civil Procedure. Furthermore, if the plaint is found deficient one on one of the score so defined in Order VII Rule 11 of the Code of Civil Procedure, then in that event, the Court will reject the plaint. That means to say, either return or rejection is the option available to the Court at a first glance of filing of the suit. After going through the order impugned, it is evident that learned Lower Court neither returned the plaint nor rejected the plaint rather he has invited a third option in not admitting the plaint.

That being so, the order impugned is set aside. The petition is allowed. The matter is remitted back to the learned Lower Court for fresh appraisal and during course thereof, it is directed that learned Lower Court will consider the reason so assigned by this Court in *C.W.J.C. no. 8216 of 2013 (Md. Anzar v. Md. Manzar Ali @ Kali)* wherein it has been observed that there happens to be distinction in between a suit having been filed in terms of Section 53-A of the Transfer of Property Act in consonance with the suit having been filed under Specific Relief Act.

(Aditya Kumar Trivedi, J.)

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