

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13208 of 2013

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Dinesh Chandra Das, S/O Late Ram Surat Das, R/O Village- Mahada, P.S.- Rajoun,
Distt.- Banka, Presently Residing At Mohalla- Aliganj, Ward No. 3, P.S.- Banka,
Distt.- Banka

.... Petitioner

Versus

1. The State Of Bihar through The Collector, Banka
2. The Medical Officer, In-Charge, (Prabhari Chikitsa Padadhikar), State
Dispensary, Rajoun, (Rajoun Rakiya Aspatal), P.S.- Rajoun, Distt.- Banka
....Defendant 1st party- Respondent 2nd party-Respondent 2nd set
3. Dr. Aruna Sinha, W/O Shree Gangadhar Prasad Sinha, R/O Mohalla-
Tilkamanjhi, P.S.- Kotwali, Distt.- Bhagalpur
4. Smt. Puspha Sinha W/O Dr. Pradeep Kumar, R/O Mohalla- Tilkamanjhi, P.S.-
Kotwali, Distt.- Bhagalpur
5. Smt. Madhuri Sinha W/O Xagendra Narayan Sinha, R/O Mohalla- Tilkamanjhi,
P.S.- Kotwali, Distt.- Bhagalpur
6. Smt. Punam Chandra W/O Shri Prakash Chandra, R/O Mohalla- Tilkamanjhi,
P.S.- Kotwali, Distt. Bhagalpur

... Plaintiffs – Respondents 1st party – Respondent 1st set

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Appearance :

For the Petitioner : Mr. Pravin Kumar Sinha, Advocate
For the Respondents : Mr. AJAY(SC-11)

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-12-2016

Heard learned counsel for the petitioner and learned
counsel for the respondent no.1.

The legal sustainability of the impugned order by which
the learned appellate court has decided not to frame two additional
issues pertaining to the valuation of the suit and the executability of
the decree under appeal is challenged by the defendant-petitioner by
filing this application under Article 227 of the Constitution of India.

The matrix of facts discloses that the suit was filed for



declaration of title and permanent injunction restraining defendants from interfering with the possession of the plaintiffs over the suit land. The suit was decreed and the defendants filed appeal against the said judgment and decree. By the impugned judgment passed in T.A. No. 118 of 1997, the appellate court below has allowed the appeal and set aside the said judgment and decree and remanded the case back to trial court for rehearing of the suit for limited purposes as discussed in the said judgment. The said order of the remand was challenged before this Court by the plaintiffs by filing M.A. No. 95 of 2009. From the order dated 28.02.2012 (Annexure-2) passed by this Court in MA No. 95 of 2009, it is evident that the said miscellaneous appeal was allowed and the judgment an order dated 22.11.2008 passed by the appellate court below was set aside with further direction to the appellate court to frame two additional issues, if it requires, and decide the matter without prolonging the appeal. Thereafter, the petition was filed before the appellate court by the plaintiffs apprising the court with regard to the order passed by this court in MA No.95 of 2009 praying for hearing the parties on the point as to whether the two additional issues were required to be framed or not. The learned court below thereafter heard the parties and by the impugned order has come to the conclusion that the two additional issues as proposed are not required in the appeal. The appellate court has further directed for



hearing of the appeal on merits on the basis of evidence available on record.

After considering the submissions on behalf of the petitioner as well as the respondent who has appeared, this court has not been persuaded to find that the reasonings assigned by the appellate court below for not framing two additional issues pertaining to the question of valuation of the suit property and executability of the decree is perverse or unreasonable in any manner. The impugned order has been passed by the appellate court below in pursuance to the direction of this court in M.A. No. 95 of 2009 leaving it to the discretion of the appellate court to frame additional issues if it is required and the appellate court after considering the entire matter has found it not required to frame the two additional issues. This court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the constitution of India.

The present application is, accordingly, dismissed.

(V. Nath, J.)

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