

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.168 of 2014

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1. Shailendra Kumar Yadav Son of Tanik Lal Yadav Resident of village - Khutaha, Police Station - Lodipur, Post office - Khutaha, District - Bhagalpur
 2. Niraj Kumar Yadav Son of Rajendra Yadav Resident of village - Kutubganj, Police Station Mojahidpur, Police Station - Mirzanhat, District - Bhagalpur
- Plaintiffs Appellants

.... Appellants

Versus

1. Badari Prasad Yadav son of Late Sankar Yadav
 2. Subhas Singh son of Late Chandan Badan Singh
 3. Karamchand Yadav Son of Late Karman Yadav All resident of Mohalla - Bahadur, Police Station - Sabour, District - Bhagalpur Plaintiffs
- Appellants
4. The State of Bihar Defendant Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

9 02-05-2016

Heard learned Counsel for the appellants.

2. This application (I.A. No. 9056 of 2014) has been filed on behalf of the appellants praying for grant of permission to appellant Nos. 1 and 2 to prosecute this appeal in their own capacity as appellants as they were not parties in the court below.

3. Apparently this Interlocutory Application has been filed in response to the defects in this regard pointed out by the Stamp Reporter regarding maintainability of this appeal. The necessitous facts which are required to be noticed is that the present appellants admittedly are purchasers of the suit land prior to the filing of T.S. No.



146 of 2006 by the plaintiff-respondents in this appeal. The said suit was filed impleading the State of Bihar as party defendant only. The said suit was dismissed but in the appeal by the plaintiffs the appeal was allowed and the suit was decreed. The State of Bihar did not prefer an appeal against the said judgment and decree of the appellate court but the present appellants have filed this appeal. It has been the stand of the present appellants that they had earlier also filed T.S. No. 252 of 2006 against the State of Bihar for the said suit land and in that suit the present plaintiff- respondents applied for being impleaded as defendant which was turned down by the court. Thereafter they approached this Court in CWJC No. 14252 of 2010 which was disposed of by order dated 5.12.2014 directing the present plaintiff-respondents to be impleaded as defendants in the said T.S. No. 252 of 2006 with further observation that the findings in T.. No. 75 of 2007 would not affect the right, title and interest of the private respondents in T.S. No. 252 of 2006 in respect of the suit plots. However the appellants have filed the present appeal against the judgment and decree passed in T.A. No. 75 of 2007 along with an application for permission to pursue this appeal under Chapter VI Rule 5 of the Patna High Court Rules.

4. The learned Counsel appearing on behalf of the plaintiff-respondents has opposed the prayer made on behalf of the appellants.

5. The aforesaid facts, which are not in dispute, clearly manifest that the plaintiff-respondents in this appeal as well as the appellants both have filed their separate suit for the suit land against



the State of Bihar. However, the suit filed by the plaintiff-respondents has been decreed at the appellate stage by the judgment and decree passed in T.A. No. 75 of 2007, whereas the T.S. No. 252 of 2006 filed by the present appellants is still pending. The main basis of the claim of the present appellants for filing this appeal as per the submission on behalf of the appellants is that their apprehension is that the plaintiff-respondents after getting themselves impleaded as defendants in T.S. No. 252 of 2006, filed by the present appellants, may get benefit on the basis of the impugned judgment in this appeal. However, this apprehension has no substance in view of the observations by this Court in CWJC No. 14252 of 2010 which was disposed of by order dated 5.11.2014 that the judgment and decree passed in T.A. No. 75 of 21007 (impugned in the present second appeal) shall not prejudice the right, title and interest of the parties as well as the learned court below while passing the final judgment in T.S. no. 262 of 2006. Examining this matter from another angle also, though the appellants are claiming right, title and interest over the land subject matter of T.A. No. 75 of 2007, but it is also admitted position that the present appellants claimed to have acquired right, title and interest over the suit land prior to filing of T.S. no. 146 of 2006 by the present appellant. As such, their status and right to maintain an appeal is definitely not governed by any of the sub-rule of Chapter VI Rule 5 of the Patna High Court Rules. It will be seemly to notice here that even according to the principles applicable in regard to a petition under Order 1 Rule 10 CPC also the present appellants cannot be held to be necessary or proper parties as

their whole attempt is to pursue their own cause of action with regard to the suit property.

5. In view of the aforesaid facts, this Court comes to the conclusion that the prayer of the appellants to pursue this appeal cannot be allowed. The Interlocutory Application (I.A. No. 9056 of 2014) is accordingly dismissed. Consequently, this Second Appeal is also dismissed.

(V. Nath, J.)

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