

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22331 of 2012

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1. Abinash Dubey Son Of Sri Niwas Dubey Resident Of Village Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
 2. Sri Niwas Dubey Son Of Late Chandrama Dubey Resident Of Village Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
 3. Saraswati Devi Wife Of Sri Niwas Dubey Resident Of Village Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur

.... Petitioners

Versus

1. Raj Kumari Devi Wife Of Sheoji Dubey Resident Of Village- Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
2. Sheoji Dubey Son Of Late Chandrama Dubey Resident Of Village- Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
3. Gayatri Devi Wife Of Ram Niwas Dubey Resident Of Village- Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
4. Kaushal Dubey Son Of Ram Niwas Dubey Resident Of Village- Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur
5. Godhan Dubey Son Of Ram Niwas Dubey Resident Of Village- Nagraon, P.O.- Piro, P.S.- Charpokhari, District- Bhojpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 22-01-2016 The petitioners have challenged the order dated 04.10.2012 passed in Title Suit No.326/2010 by Subordinate Judge-2nd, Bhojpur at Ara whereby and whereunder the prayer of the petitioners/defendants to dismiss the suit, has been rejected.

From the order impugned, it is evident that a prayer has been made under section 11 of the Code of Civil Procedure on the ground that in between the parties, for the same lis, earlier the parties have contested and got the same adjudicated upon under Title Suit No.180/1995 hence, filing of instant Title Suit happens

to be barred.

From the relief so claimed for at the end of plaintiffs/respondents, it is apparent that the suit has been filed to nullify the judgment and decree relating to Title Suit No.180/1995 as well as Execution Case No.01/2009 arising thereupon. That being so, the prayer of the petitioners/defendants with regard to section-11 of the Code of Criminal Procedure is found misconceived.

Another set of argument has been raised on behalf of the petitioners that this case has peculiar feature. For that, referred para-8 of Annexure-1, plaint of Title Suit No. 326/2010 and submitted that when the plaintiff Anuj Dubey was missing since six years and four months then in that event how the suit has been filed on his behalf. Further more, it has also been submitted that from the Annexure-2 the deposition of aforesaid Anuj Dubey, who was the defendant no.2 in Title Suit No.180/1995 and whose evidence was recorded on 27.07.2001, shown his age as 23 years. That being so, certainly in the year 2010 he was not minor. That means to say the alleged plaintiff happens to be a poppet at the hands of enemies of the petitioners, who got this suit, filed impersonating another Anuj Dubey and further, as has been pleaded, a petition has been filed to substitute aforesaid Anuj

Dubey disclosed him to be dead. So submitted that this suit has not been filed by the person in whose name it has been filed and the subsequent game plan is being commanded by somebody else to infringe upon his interest.

Fraud, nullify, judgment, decree at any moment whenever is exposed at any stage. Therefore, petitioners are at liberty to expose those things before the learned lower Court and, in case, found substantiated, the learned lower Court will pass appropriate order, in accordance with law.

The instant petition is disposed of, in terms there.

(Aditya Kumar Trivedi, J.)

Amit/-

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