

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 1323 of 2016

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Tonu Mandal, Son of Late Dr. Shiv Narayan Mandal, resident of Village-Subbanagar, P.S.-Budhuchak, District-Bhagalpur.

.... Defendant No. 1/Petitioner

Versus

1. Md. Jamal
2. Md. Kamal
3. Md. Nazir

All Sons of Late Md. Fakir, resident of Village-Kishandaspur, P.S.-Budhuchak, P.O.-Kishandaspur, District-Bhagalpur.

.... Plaintiffs/Respondent 1st set

4. Sudama Devi, D/o Late Dr. Shiv Narayan Mandal.

5. Arbind Mandal, Son of late Dr. Shiv Narayan Mandal.

Both residents of Village-Subbanagar, P.S.-Budhuchak, District-Bhagalpur.

6. Kaushalia Devi, daughter of Late Bishan Singh (Bishan Mandal), resident of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

7. Manoj Mandal

8. Anil Mandal

9. Upendra Mandal @ Opi Mandal

Respondent Nos. 7 to 9 are Sons of Late Chedo Singh (Chedi Mandal), residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

10. Ajodhia Singh

11. Jogendra Singh

12. Mahand Singh

13. Siaram Mandal

Respondent Nos. 10 to 13 are Sons of Subhag Singh, residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

14. Munni Lall Yadav, Son of Kuldeep Yadav, resident of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

.... Defendants 1st set (except defendant No. 1/Respondent 2nd set

15. Md. Basir, Son of Late Md. Israil.

16. Md. Mohin

17. Md. Mudna



Respondent Nos. 16 & 17 are Sons of Late Md. Badar, residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

18. Md. Taiyab, Son of Late Md. Chedi.

19. Bibi Madina, Widow of Md. Shamsul.

Respondent Nos. 18 & 19 are residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

.... Defendants 2nd set Respondent 3rd set

20. Futu Yadav

21. Bipin Yadav

22. Sipin Yadav

23. Dhananjay Yadav

Respondent Nos. 20 to 23 are Sons of Kantall Yadav, residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

24. Vikash Mandal, Son of Late Chunni Mandal.

25. Bunni Singh, Son of Late Bhujangi Singh.

26. Antlall Singh, Son of Late Bhujangi Singh.

Respondent Nos. 24 to 26 are residents of Village-Kishandaspur, P.S.-Budhuchak, District-Bhagalpur.

.... Defendants 3rd set/Respondent 4th set

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Appearance :

For the Petitioner : Mr. Jitendra Kishore Verma, Adv.

For the Respondents : Mr. Sharda Nand Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 08-11-2017

The petitioner is defendant No. 1 in Title Suit No. 367 of 2009. An order, dated 28.01.2016, passed by the learned Sub-Judge-VIIth, Kahalgaoon, Bhagalpur, in the aforesaid suit, is being impugned in the present proceeding, whereby, an



application filed by the petitioner, dated 12.02.2014, has been rejected.

2. I have heard Mr. Jitendra Kishore Verma, learned counsel, appearing on behalf of the petitioner, and Mr. Sharda Nand Mishra, learned counsel representing the respondents.

3. To appreciate the controversy involved in the present case, certain facts are to be briefly taken note of. The said Title Suit No. 367 of 2009 has been filed by the respondent 1st set for declaration of their title as owners of the suit land as also for a declaration that recent survey entry of the suit land in the name of persons other than the plaintiffs are wrong and incorrect. The plaintiffs also sought a declaration that the defendant 1st party (including the present petitioner) and 3rd party did not have any right, title and interest over the suit land.

4. It transpires that during the pendency of the suit, one of the plaintiffs, namely, Md. Nazir, filed an application, on 27.07.2010, before the trial Court for entry of his name in the survey records and issuance of rent receipts in his favour by the revenue authorities, in the meanwhile. The said petition was allowed by the learned Sub-Judge-VIIth, Bhagalpur, by an order, dated 19.08.2010, directing the Circle Officer, Kahalgaon, to issue receipt in the name of the said plaintiff till further orders.



5. The defendant 1st set filed an application before the trial Court, seeking review of the said order, dated 19.08.2010, mainly on the ground that by way of interim relief the main relief, as regards entry in the survey records, came to be allowed by the trial Court, which ought not to have been granted. It also appears that the defendant 3rd set, who are respondent 3rd set in the present proceeding, filed miscellaneous appeal before learned District Judge, Bhagalpur, against the same order, dated 19.08.2010.

6. On perusal of the order passed by the learned trial Court, dated 09.05.2011, on the application seeking review of the order, dated 19.08.2010, I find that the trial Court rejected the application on the premise that since some revision proceeding was pending against the order, dated 19.08.2010, before the higher Court, he could not entertain the application seeking review. Subsequently, in an order, dated 02.06.2011, passed in Title Suit No. 367 of 2009, the trial Court recorded as follows:-

2.6.11

x x x x x

“पुनः यह आदेश किया जाता है

कि आज से पूर्व वादी द्वारा दाखिल सभी

आवेदनों पर मेरे द्वारा जो आदेश पारित किया

गया है उसे रिकाल किया जाता है।”

x x x x x

x x x x x

x x x x x



The clear meaning of the aforesaid is that the trial Court decided to recall all the orders passed on all applications filed by the plaintiffs in past.

7. It is the case of the petitioner that by operation of the said part of the order, dated 02.06.2011, as noted above, the order, dated 19.08.2010, lost its force and could not be given effect to.

8. However, subsequently acting upon the said order, dated 19.08.2010, the Circle Officer, Kahalgaon, Bhagalpur, took steps for making entry in the revenue records and issuing rent receipts in favour of the plaintiff. Since the Circle Officer was acting upon the said order, dated 19.08.2010, the petitioner applied for vacating the said interim order, dated 19.08.2010, which came to be dismissed by an order, dated 28.01.2016, by the learned Sub-Judge, Kahalgaon, Bhagalpur, which is impugned in the present proceeding.

9. Learned counsel, appearing on behalf of the petitioner, has submitted that the defendant 1st set had sought review of the order, dated 19.08.2010, which was not decided on merits by the learned court below and was disposed of on a wrong premise that one set of the defendants had filed revision application against the order, dated 19.08.2010, and that the fate of



the order, dated 19.08.2010, would depend upon the outcome of the civil revision application. He contends that as a matter of act, there was no civil revision application pending before any higher Court nor such revision petition was filed by any of the parties before any Court against the said order, dated 19.08.2010. He submits that the miscellaneous appeal, preferred by the defendant 3rd set before learned District Judge, Bhagalpur, could not have been maintained and, as a matter of fact, was dismissed for default. He further submits that the petitioner did not proceed any further against the said order, dated 19.08.2010, in view of subsequent order, dated 02.06.2011, whereby, the trial Court itself had decided to recall all the orders passed on the applications filed on behalf of the plaintiffs. He, accordingly, contends that the court below by the impugned order, dated 28.01.2016, has incorrectly held that the petitioner's application could not be entertained because of binding nature of the order of dismissal, dated 18.12.2012, passed by the learned District Judge, Bhagalpur, in Miscellaneous Appeal No. 26 of 2010.

10. Learned counsel, appearing on behalf of the respondent 1st set, on the other hand, would contend that the order passed by the learned court below is based on sound reasoning and it has rightly been held that the defendants had only remedy



against the order, dated 19.08.2010, of approaching higher Court under appropriate provisions of law.

11. Upon perusal of various orders passed by the learned court below, which have been noted above, and consideration of the submissions advanced on behalf of the parties, following two things are evident:-

(i) There is no adjudication on merits of the review application filed by the petitioner before the court below as evidently, the dismissal is because of pendency of same matter before the higher Court; and

(ii) The effect of the order, dated 02.06.2011, was recall of the order, dated 19.08.2010, also.

12. I need not go into the correctness of the order, dated 02.06.2011, but the fact remains that the said order was not challenged by the plaintiffs before any Court and thus accepted the said order.

13. From the impugned order, I notice that the court below has not commented upon and taken into account the order, dated 02.06.2011, earlier passed in Title Suit No. 367 of 2009, whereby, all previous orders, passed on various applications filed by the plaintiffs, were recalled by the Court.

14. The impugned order, dated 28.01.2016, is, accordingly, set-aside.



15. In the facts and circumstances of the case, I direct that the order, dated 19.08.2010, shall not be given effect to anymore. I am of the view that the time and energy, which have been wasted on passing of an order, dated 19.08.2010, and subsequent developments could have been well utilized for expeditious disposal of the suit.

16. I direct the court below to strive for early disposal of the suit without giving the parties unnecessarily and unwarranted adjournments.

17. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.11.2017
Transmission Date	N/A

