

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16359 of 2013

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1. Smt. Durgesh Nandini W/O Shri Hari Shankar Prasad Sinha Resident Of
Mohalla- Motijheel, Ayodhya Prasad Lane, Ward No. 24 (New) P.S. + Town And
District- Muzaffarpur

2. Sri Hari Shankar Prasad Sinha S/O Late Bishwanath Prasad Resident Of
Mohalla- Motijheel, Ayodhya Prasad Lane, Ward No. 24 (New) P.S. + Town And
District- Muzaffarpur

.... Petitioner/

Versus

Satya Narayan Lal S/O Late Bishwanath Prasad Resident Of Mohalla- Motijheel,
Ward No. 24 (New) P.S. Town, P.O.- Head Officer, Muzaffarpur, District-
Muzaffarpur

.... Respondent

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Appearance :

For the Petitioner/s : Mr. RANJAN KUMAR DUBEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-02-2017

Heard Mr.Ranjan Kumar Dubey, learned counsel
appearing for the petitioners.

The petitioners are aggrieved by the impugned order
whereby the learned court below has rejected the petition filed by the
petitioners for deciding the maintainability of the suit as barred by
limitation.

After considering the submissions and perusal of the
materials on record as well as the impugned order, it is apparent that
the issues in the suit were not framed uptill the passing the impugned
order.



At this juncture, the submission on behalf of the petitioners is that the petition by the petitioners might have been filed under Order 7 Rule 11 C.P.C for rejection of plaint. After considering the materials on record, this Court does not find that the bar of suit by limitation is apparent from the averments made in the plaint. Even otherwise also, the bar of suit by limitation is generally mixed question of law and facts. Therefore, this Court declines to accept the submission on behalf of the petitioners that the petition filed by the petitioners ought to have been considered under Order 7 Rule 11 C.P.C. for rejection of the plaint. It is concluded that the petition filed by the petitioners in the court below is clearly misconceived. This Court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed.

However, it is observed that the parties to the suit would be at liberty to raise appropriate objections at appropriate stages in the suit in accordance with law.

(V. Nath, J)

Nitesh/-

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