

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.175 of 2014

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1. Hafizun Nisha wife of Rahim Mian.
2. NoorHasan son of Late Rahim Mian
3. Amir Hassan son of Late Rahim Mian All resident of village - Nawa Nagar ,
Nijamat, Motalika Bazar, P.S. and Anchal- Sahebganj, District- Muzaffarpur

.... Petitioner/s

Versus

1. Smt. Meena Jaiswal wife of Ram Narain Jaishwal .
2. Smt Neelam Jaishwal wife of Ram Nandan Prasad Jaishwal Both resident of
village - Nawa Nagar , Nijamat, Motalika Bazar, P.S. and Anchal- Sahebganj,
District- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Jha
Mr. Vikash Kumar Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 28-04-2017

Heard learned counsel for the petitioners and learned
counsel for the opposite parties.

This revision petition has been preferred against the
order dated 14.08.2014 passed by the learned Sub-Judge-VIII,
Muzaffarpur in Title Suit No. 03 of 1999, by which he rejected the
petition filed on behalf of the petitioners under Order 7 Rule 11 of
the C.P.C.

The Opposite Parties filed Title Suit No. 03 of 1999
against the petitioners and other for declaration of title and
possession over R.S. Khata No. 754 pertaining to Khesra Nos. 148,
area 1 decimal of Village Nawa Nagar, Nijamat P.S. Sahebganj,



District – Muzaffarpur and alternatively, if the plaintiffs, during the pendency of the suit, are found dispossessed, the decree for recovery of the possession with mesne profit be passed.

Furthermore, the opposite parties sought relief for declaration of Judgment and Decree dated 20.05.1997 passed by the Additional District Judge, Muzaffarpur in Title Appeal No. 59 of 1984, is non-binding upon them because the aforesaid judgment and decree was obtained by playing fraud on the Court and in alternate, they sought for relief that if they are not found entitled to the above stated reliefs, the consideration money paid by them be realized from the defendants of the aforesaid suit with interest.

The petitioners appeared in the aforesaid suit and filed written statement. Issues were framed. The opposite parties led their evidence but in the meantime, the petition under Order 7 Rule 11 of the C.P.C. was filed on behalf of the petitioners praying therein to reject the plaint on the ground that Title Suit No. 31 of 1980 was earlier filed by ancestors of the opposite parties for the same property and in the aforesaid suit, the ancestors of petitioners were defendants. The said suit was decided against the ancestors of petitioners, who preferred Title Appeal No. 59 of 1984 and the aforesaid Title Appeal No. 59 of 1984 was allowed and during the pendency of the aforesaid Title Appeal No. 59 of 1984, the same



lands were transferred in favour of the opposite parties and, therefore, the aforesaid transaction was hit by Section 52 of the Transfer of Property Act.

The learned Court below rejected the aforesaid petition holding that the aforesaid question is a mixed question of fact and law and therefore, the plaint of Title Suit No. 03 of 1999 could not have been rejected.

The learned counsel appearing on behalf of the petitioners submits that admittedly, the Title Suit No. 31 of 1980 was filed by ancestors of the opposite parties, in which decree was passed, which was challenged in Title Appeal No. 59 of 1984 and the aforesaid Title Appeal No. 59 of 1984 was allowed and accordingly, the Judgment and Decree in the said Title Appeal No. 59 of 1984 was passed in favour of ancestors of petitioners. He further submitted that in the aforesaid Title Suit No. 31 of 1980, the same property, which is the subject matter of present case, was in dispute. He further submits that moreover, the petitioners filed miscellaneous case for setting aside the Judgment and Decree passed in Title Appeal No. 59 of 1984, but the aforesaid petition was rejected and thereafter, they preferred Civil Revision No. 1119 of 1998 before this Court. However, the aforesaid Civil Revision No. 1119 of 1998 was dismissed as withdrawn and therefore, the Judgment was passed in



Title Appeal No. 59 of 1984 attained its finality and therefore, the present suit that is Title Suit No. 03 of 1999 is barred by law of *res judicata* but the learned Court below failed to take note of the aforesaid fact and rejected the petition filed under Order 7 Rule 11 of the C.P.C.

I am not at all convinced with the submissions advanced on behalf of the petitioners because in the above stated facts and circumstance, the question, as raised on behalf of the petitioners, cannot be decided at the very threshold of the suit rather to decide the aforesaid point, some evidence is needed and therefore, in my view, the learned Court below rightly held that the point raised by the petitioners is a mixed question of law and fact, which cannot be decided under Order 7 Rule 11 of the C.P.C.

Therefore, I do not find any ground to interfere into the impugned order of the learned Court below. Accordingly, this revision petition stands dismissed at the stage of admission itself.

(Hemant Kumar Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	03.05.2017
Transmission Date	

