

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7807 of 2013

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Abdul Mazeed

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

- 4 09-08-2017
1. Heard the learned counsel for the petitioner and the learned counsel for the respondent.
 2. This application under Article 227 of the Constitution of India has been filed by the defendant petitioner for setting aside the order dated 12th February, 2013 passed by Sub Judge IV, Bhagalpur in connection with Title Suit No.503 of 2012 whereby the learned Sub Judge rejected the application filed by the petitioner praying for an order to the effect that the suit is hit of Section 11 and 12 of the Code of Civil Procedure.
 3. The learned counsel, Mr. Pramod Kumar Singh, for the petitioner submitted that earlier Title Suit No.88 of 1992 was filed by the petitioner against one Haji Bisu. The said suit was decreed on compromise between the both of them. Thereafter, the respondent No.2 to 7 filed Title Suit No.157 of 1992 for setting aside the compromise decree on the ground that prior to the compromise



decree, Haji Bisu had already executed the two registered sale deeds dated 25.09.1981 and 03.03.92 but in the said suit, i.e., 88 of 1992, the purchasers were not made party and compromise decree was passed on 06.07.1992. The Title suit No.17 of 1992 was dismissed on the question of jurisdiction of the Court only and it was not decided on merit as to whether the compromise was binding on the present purchasers respondents or not. In the said judgment, it was directed that the respondents may approach appropriate forum for deciding their dispute on merit and thus this Title Suit No.503 of 2012 have been filed.

4. The learned counsel, Mr. Singh, appearing on behalf of the petitioner submitted that since earlier Title Suit No.157 of 1992 was dismissed by the trial Court as well as by the appellate court, the said judgment and decision on the question will operate as res judicata in the present case. The same relief which was prayed for in Title Suit No.157 of 1992 has been prayed by the respondents in the present Title Suit No.503 of 2012 and the issue between the parties is the same but the learned Court below rejected the application filed by the present petitioner without considering the fact that the present respondents are claiming title through the defendant of Title Suit No.88 of 1992.

5. On the other hand, the learned counsel, Mr. Deepak Kumar, appearing on behalf of the respondent submitted that on the date of



compromise, Haji Bisu had no title to the suit property as he has already sold the property to the preset respondents but prior to compromise, the purchasers respondents were not made party in Title Suit No.88 of 1992 and fraudulently, the plaintiff present petitioner and the defendant Haji Bisun compromised and comprise decree was passed. According to the learned counsel, since respondents were not party in the said suit, it will not be binding on these respondents and appellant operate as res judicata.

6. From perusal of the impugned order, it appears that the Court below has considered all these aspects of the matter and also held that the case of **Banwari Lal Vs. Smt. Chando Devi** reported in **A.I.R. 1993 SC 1139= 1993 (1) S.C.C. 581** is not applicable and held that the question of res judicata will be decided along with other issues and rejected the application.

7. Thus, I find no irregularity in the impugned order nor there is jurisdictional error nor the order passed by the Court below in the manner not permitted by law.

8. Thus, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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