

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Revision No.55 of 2015**

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1. Suresh Prasad Mali son of Late Sita Ram Bhagat, Resident of village & P.O.-  
Bhadwar, P.S. Chandi, District Bhojpur

.... .... Petitioner/s

Versus

1. Sonamati Devi wife of Kesho Sao, Resident of village & P.O.- Bhadwar, P.S.  
Chandi, District Bhojpur  
2. The state of Bihar through Collector, Bhojpur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. V.K.Sharma  
For the Respondent/s : Mr. Kameshwar Prasad Gupta GP-X  
For the opposite party : Mr.Mr. Naresh Chandra Verma  
Mr. Natraj Verma

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR  
SRIVASTAVA**

**ORAL JUDGMENT**

**Date: 01-09-2017**

Heard learned counsel for the petitioner as well as  
learned counsel for the opposite party.

2. This Civil Revision petition has been preferred against  
the order dated 30.03.2015 passed by Sri Mithlesh Kumar, Munsif-  
III, Ara, Bhojpur in Title suit no. 80 of 2009 by which and  
whereunder he rejected the petition dated 04.09.2014 filed on behalf  
of the petitioner for framing preliminary issue under Order XIV Rule  
2 of the Civil Procedure Code relating to jurisdiction of the court in  
view of statutory bar laid down under section 18 of the Bihar  
Privileged Persons Homestead Tenancy Act.



3. The opposite party no. 1 filed Title suit no. 80 of 2009 against the petitioner and others for declaration of her right, title and confirmation of possession over disputed plot. She further sought alternative relief for recovery of possession and also sought relief that the Collector, Bhojpur had no right to issue Basgit Parcha in favour of the petitioner and she also sought relief for permanent injunction against the petitioner of this civil revision petition as well as others.

4. The petitioner, being one of the defendants of the aforesaid suit, appeared in the suit, and filed a petition under Order XIV Rule 2 of the Civil Procedure Code mentioning therein that the aforesaid suit was hit by section 18 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 and, accordingly, he prayed that the preliminary issue relating to the jurisdiction of the court be framed and the suit may be decided on the basis of aforesaid preliminary issue.

5. The opposite party no. 1 filed rejoinder of the aforesaid petition and the learned court below, having heard the parties, rejected the aforesaid petition passing the impugned order dated 30.03.2015 against which this petition has been filed.

6. Learned counsel appearing for the petitioner challenged the impugned order arguing that the learned court below failed to appreciate the matter in right perspective and as a matter of



fact, the learned court below could not understand the point involved in the present matter. He submits that it is incumbent duty of the court below to peruse the pleadings of the parties and having examined them under Order X Rule 2 of the Civil Procedure Code give an opportunity of hearing and then, proceed in accordance with Order XIV Rule 2 of the Civil Procedure Code. He further submits that section 18 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 clearly says that no suit shall lie against any order passed under the aforesaid Act except on the ground of fraud or want of jurisdiction but in the present case, the opposite party no. 1 failed to plead the factum of fraud in her plaint and so far as point of jurisdiction is concerned, the Collector had jurisdiction to grant Parcha and, therefore, in view of the aforesaid circumstance, the suit filed by the opposite party no. 1 was barred by the above stated Act but even then the learned court below failed to frame preliminary issue in this regard and has to decide the aforesaid suit on the above stated preliminary issue.

7. Learned counsel for the petitioner, after going through the impugned order, submits that the learned court below has not given proper reasoning for rejection of the petition filed on behalf of the petitioner. He also submits that the learned court below adopted new procedure because first of all, the learned court below ought to



have perused the pleading of the parties and then to decide as to whether the suit can be decided on the basis of preliminary issue or not but the learned court below failed to do so and accordingly, committed illegality.

8. On the other hand, learned counsel appearing for the opposite party no. 1 refuted the above stated submissions pointing out that at para-7 of the plaint the factum of fraud has specifically been pleaded and moreover, the opposite party no. 1 filed the above stated Title suit no. 80 of 2009 for declaration of her right, title and confirmation of possession and she has not sought any relief against the order of District Magistrate rather she challenged the jurisdiction of the District Magistrate for grant of parcha to the petitioner and, therefore, the aforesaid suit was not hit by section 18 of the Bihar Privileged persons Homestead Tenancy Act, 1947 and the learned court below rightly rejected the petition filed under section XIV Rule 2 of the Civil Procedure Code.

9. Having heard the above stated contentions of the parties, I went through the record. Here, I would like to refer Order XIV Rule 2(2) of the Civil Procedure Code which says that where issues both the law and fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issues relates to ( a)



the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in-force, and for that purpose may, if he thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision of that issue.

10. From bare perusal of the aforesaid provision, it is obvious that in a suit, preliminary issue can be framed only on two grounds. Firstly, if the suit is hit by lack of jurisdiction of the court and secondly, if any law creates bar in entertaining the suit. Only on those two grounds a suit can be decided by framing preliminary issue. In the present case, the petitioner challenged the maintainability of the present suit on the ground of section 18 of the Bihar Privileged Persons Homestead Tenancy Act, 1947 but the aforesaid section also gives some liberty to file civil suit, if the orders, passed in the aforesaid act are challenged on the ground of fraud as well as want of jurisdiction.

11. In the present case, it is obvious that the opposite party no. 1 has not only challenged the issuance of parcha to the petitioner on the ground of fraud but also on the ground of want of jurisdiction. Moreover, it is the discretionary power of the court to frame preliminary issue and it is only the court who can decide as to whether there is need of framing preliminary issue or not and parties



to the suit cannot compel the court to frame preliminary issue.

12. Therefore, in my view, the learned court below rightly rejected the prayer of the petitioner and passed the impugned order. Hence, I do not find any merit in this civil revision petition and accordingly, this civil revision stands dismissed on admission stage itself. However, this order shall not cause any prejudice to the learned court below while considering the above stated issue at the time of passing final judgment.

**(Hemant Kumar Srivastava, J)**

N.K/-

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