

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.97 of 2015

=====

1. Md. Shakil Ansari @ Shakil Ansari Son of Md. Nizamuddin Ansari, resident of village Satanpur P.S. - Ujiarpur, District - Samastipur, At present resident of Mohalla - Baital Chowk Dharampur Ward No. 9, Near Bari maszid P.S. Town, District - Samastipur.

.... Petitioner/s

Versus

1. Meena Devi Wife of Ram Prit Baitha resident of village Ratbara, P.S. - Kalyanpur, District - Samastipur.

2. Md. Wahid Akhtar Ansari, Son of Md. Kalimuddin Ansari, resident of village - Baro, P.S. - Barauni District - Begusarai. A/p resident of Mohalla - Baital Chowk Dharampur Ward No. 9 Near Bar Maszid P.S. town, District - Samastipur.

3. Md. Taiyali Hussain, Son of Late Md. Safi Rahman resident of village - Kanalpur, P.S. - Kunauli, District - Supaul.

4. Binay Kumar Rai, Son of Late Nagendra Rai, resident of village - Dharampur Nisatama out of town, P.S. - Town, District - Samastipur.

5. Sanjay Kumar Rai, Son of Late Nagendra Rai, Resident of Village - Dharampur Nisatama out of town, P.S. Town, District - Samastipur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar

For the opposite parties : Mr. Anil Kumar

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 21-09-2017

1. Heard learned counsel for the petitioner as well as learned counsel for opposite party no.1. No one appeared on behalf of the remaining opposite parties.

2. This revision petition has been preferred against the order dated 30.7.2015 passed by learned Sub Judge V, Samastipur in Money suit no. 01/2014/ R.N. 90/2014 by which and whereunder he rejected the petition filed on behalf of the petitioner and opposite party nos.2 to 5 under



Order 7 rule 11 of the CPC praying therein for rejection of the plaint of Money suit no. 01/2014.

3. Opposite party no.1 filed the aforesaid Money suit no. 01/2014 against the petitioner and remaining opposite parties for a decree of money amounting to Rs 4,45,711/- from the petitioner and opposite party no.2, a decree of money amounting to Rs 4,45,711/- from opposite party no.3, and a decree of money amounting to Rs 2,68,111/- from opposite party nos.4 and 5.

4. The case of the plaintiff/opposite party is that the aforesaid opposite party/defendant executed several deeds in her favour and after execution of the sale deeds, she got her name mutated but subsequently, one Md. Sajeed @ Khusroo and others claimed that the aforesaid opposite party had already executed sale deeds in their favour in the year 1990 and subsequently, aforesaid persons dispossessed the petitioner from purchased lands.

5. Opposite party no.2 and the petitioner filed petition under Order 7 rule 11 of the CPC before the court below on the ground that without cancellation of sale deeds, relief as claimed by opposite party no.1, could not be granted and, therefore, plaint should be rejected under Order



7 rule 11 of the CPC but the court below rejected the aforesaid petition passing the impugned order against which this revision has been preferred.

6. Learned counsel appearing for the petitioner submits that admittedly, petitioner and opposite party nos.2 to 5 sold lands to opposite party no.1 and after that she got possession of the aforesaid lands and also got mutated her name but subsequently, some dispute arose between her and some strangers and in that dispute, she was dispossessed by the aforesaid strangers. He, further, submits that unless sale deeds executed by the petitioner and opposite party nos.2 to 5 are cancelled, opposite party no.1 has no right to recover the consideration amount of the aforesaid sale deeds 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 CPC. He, further, submits that moreover, the above stated money suit is liable to be rejected on the ground of non-joinder of the party because person, who had dispossessed opposite party no.1 from the suit lands, has not been made party to the aforesaid suit.

7. On the other hand, learned counsel appearing for opposite party no.1 refutes the above stated submissions on



the ground that plaint of Money suit no. 01/2014 is sought to be rejected under Order 7 rule 11 of the CPC on two grounds. Firstly, non-joinder of necessary party and secondly, not making relief of cancellation of sale deeds but, as a matter of fact, both the aforesaid grounds are not covered under Order 7 rule 11 of the CPC and, therefore, learned court below rightly rejected the petition filed on behalf of the petitioner.

8. Having heard contentions of both parties, I went through the record. It is admitted position that opposite party no.1 has brought money suit for realization of the amounts which were paid by her as consideration money at the time of execution of the sale deeds and it is the specific case of opposite party no.1 that the petitioner and opposite party nos.2 to 5 had no right to execute the sale deeds in her favour as the lands in question had already been sold to other person. Therefore, it is obvious from the aforesaid fact that as per case of opposite party no.1, sale deeds executed in her favour were void ab initio. Moreover, opposite party no.1 has brought the suit only for recovery of consideration amount and, therefore, learned court below rightly held that there was no need to seek relief for cancellation of sale



deeds. Furthermore, in my view, there was no need to add the person, who has dispossessed the opposite party no.1, as party to the money suit because claim of opposite party no.1 is only for recovery of consideration amount.

9. On the basis of the aforesaid discussions, I am of the view that learned court below has rightly rejected the petition filed under Order 7 rule 11 of the CPC and I do not find any ground to interfere into the impugned order. Accordingly, this revision petition stands dismissed and the impugned order passed by the learned court below is, hereby, confirmed.

shahid

(Hemant Kumar Srivastava,J)

AFR	AFR
CAV DATE	NA
Uploading Date	3.10.2017
Transmission Date	NA

