

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.525 of 2016

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Smt. Madhurani Singh Wife of Sri Dayanand Singh, Resident of Village- Pakariya, P.O.-Pakariya, P.S.-Shambhuganj, District-Banka. At present residing at Mohalla-Maliktola Ward No.14, Behind old Sadar Hospital, P.O.-Banka, P.S.-Banka, District-Banka. Petitioner.

Versus

1. Chandra Sekhar Prasad Yadav Son of Late Mahavir Yadav.
 2. Mnoy Kumar Yadav Son of Chandra Sekhar Prasad Yadav.
Both resident of Village- Dhaka, P.O.-Dhaka More, P.S.-Banka, District-Banka.
 3. Mostt. Sushila Ghosh, Wife of Late Subhash Chandra Ghosh.
 4. Sachin @ Banti Ghosh Son of Subhash Chandra Ghosh.
 5. Beauti Ghosh.
 6. Suprita Ghosh.
 7. Sweta Ghose.
 8. Sonam Ghosh, all are Daughter of late Subhash Chandra Ghosh, Resident of Mohalla- Maliktola Ward No.14 of Nagar Panchayat , Banka Behind Sadar Hospital, Purani Thakurwari Road, P.O.-Banka, P.S.-Banka, District-Banka .
 9. Smt Meera Bala Das Wife of Umesh Chandra Das and Daughter of late Rup Narain Ghosh Resident of Village-Racha Gadiha, P.O.+P.S.+District-Begusarai.
 10. Smt. Ira Bala Das Wife of Sri Gopal Chandra Das and Daughter of Late Rup Narain Ghosh Resident of Ram Nagar Godda, P.O.+P.S.+District-Godda (Jharkhand).
 11. Smt. Heera Bala Dutta Wife of Sri Devendra Kumar Dutta and Daughter of Late Rup Narain Ghosh Resident of Ghat Sheela , P.O.+P.S.-Ghat Sheela, District-Jamshedpur (Jharkhand).
 12. Smt. Sobha Majumdar Wife of Sri Dhrub Ranjan Majumdar and Daughter of Late Rup Narain Ghosh Resident of Purab Sarai Munger, P.O.+P.S.+District-Munger. Respondents
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Appearance :

For the Appellant/s : Mr. Dharendra Kumar, Adv.

For the Respondent/s : Mr. Shivendra Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-04-2017

Heard the learned counsel for the parties.

The present application has been filed against the order by which the learned court below has rejected the prayer of the petitioner for determination of the issue of the maintainability of the proceeding in question as preliminary issue under Order 14 Rule 2.



The facts are not in dispute that the petitioner is the assignee of the decree holder in a suit which was decreed in the year 1979 granting the relief for declaration of title and confirmation/recovery of possession. The said decree eventually was executed on 04.03.2008 as submitted by learned counsel for the petitioner. The present petition under Order 21 Rule 99 C.P.C. for recovery of possession has been filed by the respondents who in their own petition filed under Order 21 Rule 99 C.P.C.(Annexure-1) have accepted to have purchased the property in question from the judgment debtor in the year 2002 by different sale deeds. Learned counsel for the petitioner has submitted that the petitioner's similar prayer and petitions have already been rejected earlier and the said rejection order has been affirmed by higher forums as well. It has been further submitted that the present petition filed by the respondents is clearly an abuse of the process of law.

The learned counsel for the respondents has however supported the impugned order.

After considering the submissions, materials on record as well as the impugned order, it is manifest that the respondents who are applicants in Misc.Case No.27/2008 have accepted to have purchased the suit property from the judgment debtor after institution of the suit. Their claim, as made in the miscellaneous case, is prima facie in the teeth of Order 21 Rule



102 C.P.C. Even otherwise also, the earlier orders passed by different forums in the claim of the respondents are required to be adverted to for the purpose of conclusion that the miscellaneous case is otherwise not barred. The intent and purpose of Order 14 Rule 2 C.P.C. need no underlining that the same is meant to curtail the lengthy proceeding in appropriate cases.

The learned court below in the facts and circumstances of the case has definitely committed error of jurisdiction in rejecting the prayer of the decree holder-petitioner for determination of the issue of maintainability of the miscellaneous case as preliminary issue as envisaged under Order 14 Rule 2 C.P.C.

In result, this application is allowed and the impugned order is set aside. The petition filed by the petitioner on 06.01.2014 is allowed. The learned court below is directed to decide the maintainability of the Miscellaneous Case No.27 of 2008 as preliminary issue in accordance with law and after hearing the parties and considering the materials on records. It is made clear that any observation in this order would not prejudice the case of either party in any manner and the same shall be decided in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2017
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