

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.640 of 2016

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1. Vijay Kumar Raut S/o Late Ram Avtar Raut, Resident of Mohalla-Karimabad @ Magardahi, Ward No-18 under Town Samastipur, Police Station and District- Samastipur Petitioner

Versus

1. Baleshwar Mahto S/o Late Tilak Mahto
2. Most. Jaykala Devi W/o Late Tuntun Mahto
3. Ram Babu Mahto S/o Late Tuntun Mahto
4. Seema Devi W/o Late Raju Mahto and daughter of Late Tuntun Mahto
5. Meena Devi W/o Shambhu Mahto and daughter of Late Tuntun Mahto
All 1 to 5 are resident of Mohalla Karemabad @ Magardahi, New Ward No 18 under Town Samastipur, Police Station and District- Samastipur.
6. Jitendra Mahto S/o Late Binod Mahto
7. Dharmendra Mahto S/o Late Baudhe Mahto Both 6 and 7 are resident of Mohalla- Karemabad @ Magardahi, New Ward No 18 under Town Samastipur, Police Station and District- Samastipur Respondents

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Appearance :

For the Petitioner : Mr. Anirudh Kumar Sinha, Adv.
For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

9 27-11-2017

Heard the learned counsel for the petitioner .

No body appears on behalf of the respondents.

The petitioner, defendant no. 1 in Title Suit No. 112 of 2013 filed this petition that question of title has been fullfledgedly decided in Eviction Suit no. 5 of 2000 filed by the petitioner and others. The eviction suit was decreed, thereafter, the defendants of the eviction suit and the plaintiffs in Title Suit No. 112 of 2013 preferred Eviction Appeal No. 2 of 2002 which was dismissed on 13.03.2011. The defendants preferred Second Appeal No. 288 of 2011, which was also dismissed on 08.03.2013. Special Leave Petition (Civil) was also dismissed. Thereafter, the defendants filed Title Suit No. 112 of 2013.

The petitioner filed a petition that since the question of title has also been looked into and decided by the Court in



Eviction Suit no. 5 of 2000, therefore, the declaration of title in the present suit is barred by principle of res judicata. This issue may be framed as preliminary issue, but, the learned Sub Judge, III, Samastipur, dismissed the petition of the petitioner holding that the issue of principle of res judicata shall be decided along with all other issues at the time of disposal of the suit.

The learned counsel for the petitioner placed reliance on the judgment of the Apex Court reported in **(2010) 9 SCC, 560 (Md. Nooman & Ors. Vrs. Md. Javed Alam & Ors.)**, but, I do not find any illegality in the order. The learned Sub Judge rightly held that in the eviction suit the title of a party has not been decided and the Court have incidentally gone into the ownership and title of a party. Even the Apex Court in the case of **Md. Nooman & Ors.** (supra) held that in a suit for eviction even if the Court goes into the question of title, it examines the issue in an ancillary manner and in such cases any observation or finding on the question of title would certainly not be binding in any subsequent suit on the dispute of title.

Having considered the facts, aforesaid, I do not find any merit. Accordingly, the miscellaneous petition is **dismissed**.

(Prabhat Kumar Jha, J)

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