

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 126 of 2014

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1. Vanktesh Upadhaya @ Vanktesh Upadhyay
2. Munijee Upadhaya @ Munijee Upadhyay
3. Brij Mohan Upadhaya @ Brij Mohan Upadhyay All son of Late Ayodhya Upadhaya @ Upadhyay All Resident of village - Maranpur, P.O. Maranpur, P.S. Sahar, District- Bhojpur, at Present P.S. Narayanpur, Pragana- Piro, District- Bhojpur at Arrah.

.... Petitioners

Versus

1. The State of Bihar.
2. Brindavan Upadhaya @ Upadhyay
3. Narvda Upadhyaya @ Upadhyay Son of Late Shiv Nandan Upadhyay
4. Ram Egebal Upadhaya s/o Doman Upadhaya @ Upadhyay
5. Pashuram Upadhaya @ Upadhyay All Resident of village + P.O. Maranpur, P.S. Sahar, at Present P.S. Narayanpur, Pragana- Piro, District- Bhojpur at Arrah.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Bhubneshwar Pd. Adv.
Mr. Manoj Kumar Singh, Adv.
For the Opposite Parties : Mr. Gopal Govind Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 28-07-2017

1. Heard learned counsel for the petitioners as well as learned counsel appearing for the private opposite parties.

2. This revision petition has been preferred against the order dated 24.05.2014 passed by learned Sub Judge-IV, Ara in Title Suit No. 199 of 2004 by which and whereunder he gave permission to petitioners to withdraw Title Suit No. 199 of 2004 subject to payment of cost of Rs. 3000/- and also debarred the petitioners from filing fresh suit on same cause of action.



3. It would appear from perusal of this petition that petitioners filed Title Suit No. 199 of 2004 against private opposite parties seeking relief of declaration of their right, title and possession in respect of the suit property.

4. The private opposite parties appeared in the aforesaid suit and filed their written statement. The suit proceeded and evidence of the parties was recorded. However, in course of argument, a petition under Order 6 Rule 17 for amendment of pedigree given in the plaint was filed but the aforesaid petition was rejected by the Sub Judge-IV, Ara vide order dated 03.01.2012 against which petitioners preferred CWJC No. 2753 of 2012 which was, too, rejected by a co-ordinate Bench of this court vide order dated 25.04.2013. However, after passing of order dated 25.04.2013 in CWJC No. 2753 of 2012, the petitioners filed petition under Order 23 Rule 1 and Section 151 of the C.P.C. for withdrawal of the above stated suit and the learned Sub Judge having considered the aforesaid prayer as well as submissions of the parties passed the impugned order.

5. Learned counsel appearing for the petitioners submits that due to wrong advice of concerned counsel, wrong pedigree was given in the plaint of Title Suit No. 199 of 2004 but when the aforesaid fact came to notice of the petitioners, they filed amendment petition but unfortunately, the prayer of amendment of pedigree was



rejected up to this court and that was the reason, the petitioners made prayer for withdrawal of aforesaid Title Suit No. 199 of 2004 so that they could file a fresh suit with amended pedigree.

6. On the other hand, learned counsel appearing for the private opposite parties submits that the prayer of withdrawal was made after nine years of filing of Title Suit No. 199 of 2004 and as a matter of fact, when at the time of argument the petitioners felt that they could not win the aforesaid title suit on the basis of pedigree given in the plaint, they filed amendment petition but the amendment petition was rejected up to this court and moreover, the private opposite parties spent huge money in contesting the aforesaid Title Suit No. 199 of 2004 and, therefore, the learned Sub Judge rightly refused to grant permission to the petitioners to file fresh suit on same cause of action.

7. It is an admitted position that petitioners filed amendment petition for amending the pedigree given in plaint of Title Suit No. 199 of 2004 but the aforesaid prayer was rejected up to this court and after that petitioners filed petition for withdrawal of Title Suit No. 199 of 2004 so that they could file fresh suit with amended pedigree but in my view, the learned court below rightly refused to give permission to the petitioners to file fresh suit with amended pedigree because the petitioners had already lost the battle up to the



High Court in respect of amendment of pedigree given in the plaint of Title Suit No. 199 of 2004 and moreover, the petitioners had not made any prayer of filing fresh suit on same cause of action in their petition filed under Order 23 Rule 1 of the C.P.C.

8. Therefore, in the aforesaid circumstances, in my view, this revision petition does not have any merit. Accordingly, this revision petition stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.08.2017
Transmission Date	N.A.

