

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.141 of 2012

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Subodh Krishna S/O Late Brijraj Krishna Das Resident Of Kunj Bhawan,
Raghunandan Lal Estate, Golaghat, P.S- Tatarpur, Distt- Bhagalpur.

.... Petitioner/s

Versus

1. Sunil Chand Das S/O Late Krishna Chand Sad Resident Of Bhagat Singh Chowk, Munger.
2. Arun Krishna Das S/O Late Ladman Das Resident Of Kunj Bhawan Golaghat Bhagalpur.
3. Hare Krishna Das S/O Late Laxman Das Resident Of Kunj Bhawan Golaghat Bhagalpur.
4. Murari Krishna Das S/O Late Laxman Das Resident Of Kunj Bhawan Golaghat Bhagalpur.
5. Shyam Krishna Das S/O Late Laxman Das Resident Of Kunj Bhawan Golaghat Bhagalpur.
6. Aashish Krishna Das S/O Late Binoy Krishna Das Resident Of Kunj Bhawan Golaghat Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the petitioner and learned counsel for
respondent no. 1. No one appears on behalf of the other respondents.

2. Petitioner has preferred this petition for quashing order dated
18.05.2012 passed by learned Sub Judge-VII, Bhagalpur, in Title suit no. 162 of
2011 by which and whereunder he dismissed the aforesaid Title suit no. 162 of
2011 on admission stage under order XII Rule 6(1) of the C.P.C.

3. Petitioner filed Title suit no. 162 of 2011 against the respondents
for declaration of his ownership and for correction of survey entry made in the
revenue records in respect of disputed property which were shown in schedule of



suit property of the plaint. Learned Sub Judge-VII, Bhagalpur, having heard the petitioner on the point of admission dismissed the aforesaid suit passing the impugned order on the ground that the issues raised in the present plaint have already been settled in Title suit no.28 of 1956 of 1931/34 by the then Sub Judge, Patna.

4. Learned counsel appearing for the petitioner submits that the learned court below failed to take notice of this fact that the Order XII Rule 6(1) of the C.P.C was not applicable in the case at the stage of admission and, furthermore, the learned court below failed to appreciate this fact that the plaint of above stated plaintiff in the suit was filed in accordance with law and, therefore, the learned court below committed an error in dismissing the Title suit no. 162 of 2011 on merit at the stage of admission.

5. Learned counsel appearing for the respondent no. 1 submits that he does not have any instructions from his client and, therefore, he is not in a position either to support or oppose the impugned order.

6. The impugned order goes to show that the Title suit no. 162 of 2011 was rejected by the learned Sub Judge-VII, Bhagalpur, under Order XII Rule 6(1) of the C.P.C and while rejecting the aforesaid suit, the learned Sub Judge-VII, Bhagalpur, observed that the issues raised in the present plaint have already been decided by a competent civil court but it has been pleaded in the plaint that some provisions regarding the right and title of the plaintiff of that suit had been made in compromise decree which had been passed in that suit and on the basis of aforesaid compromise decree, the plaintiff filed the present suit. Moreover, it is not in dispute that the court below had got no jurisdiction to exercise its power vested to it under Order XII Rule 6(1) of the C.P.C because Order XII Rule 6(1) of the C.P.C comes into play after appearance of the



dependants in the suit and the power vested to the court below under the aforesaid provision can exercised by the court on the basis of admission of the parties and that provision cannot be invoked by the court below at the time of admission of the suit.

7. The procedure regarding institution of the plaint has been given in Order IV of the C.P.C which says that every suit shall be instituted by presenting a plaint in duplicate to the court or such officer as it appoints in this behalf and, furthermore, the aforesaid order says that every plaint shall comply with the rules contained under Orders VI and VII, so far as they are applicable and the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub rules (1) and Rule 2.

8. A bare perusal of the aforesaid provision goes to show that for institution of a suit, the compliance of Orders VI and VII of the C.P.C is sufficient. Order VII Rule 11 of the C.P.C. speaks about the situation in which the plaint can be rejected and if the grounds mentioned in the order 6 Rule 11 of the C.P.C are not available to the concerned court, the plaint cannot be rejected.

9. The learned court below has rejected the plaint of Title suit no. 162 of 2011, perhaps, keeping in mind that the present suit was barred by the law of *res judicata* but the pleadings of the plaint of the present case go to show that the aforesaid question is mixed question of law and fact which could have been decided only after full-fledged evidence. Therefore, in my view, the impugned order dated 18.05.2012 cannot be sustained in the eye of law. Hence, this petition is allowed and the impugned order dated 18.05.2012 passed by learned Sub Judge-VII, Bhagalpur, in Title suit no. 162 of 2011 stands quashed and the matter is sent back to the concerned court for fresh hearing on admission matter and passing a fresh order in this regard in accordance with law.



10. Let the lower court record be returned to the concerned court without any delay.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.03.2017
Transmission Date	09.03.2017

