

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.104 of 2015

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1. Ashrafi Devi widow of Late Kaushal Kishore Mishra
2. Pankaj Kumar @ Pankaj Mishra
3. Rakesh Kumar
4. Kamini Kumari
5. Kiran Kumari All sons and daughters of Late Kaushal Kishore Mishra
All residents of Village Rasulpur Wajid Near S.K.M.C.H. College, P.O.
Ehikhanpur , Kothi , P.S. Ahiyapur , District - Muzaffarpur.

.... Petitioner/s

Versus

1. Kailash Rai
2. Shambhu Rai Sons of Late Jugeshwar Rai Resident of Village Rasulpur
Saiyed Salim , P.O. Bhikhanpur Kothi , P.S. Ahiyapur , District -
Muzaffarpur.
3. Chinta Devi Wife of Late Sajjan Kumar Mishra
4. Roshan Kumar Son of Late Sajjan Kumar Mishra
5. Archana Kumar @ Runjhun Kumari
6. Dolly Kumari
7. Sweta Kumari All Daughters of Late Sajjan Kumar Mishra All residents
of Mohalla Syed Wazid Near S.K.M.C.H. Medical College , Muzaffarpur ,
P.O. Ahiyapur , Munsifi , District -Muzaffarpur.
8. Tasaduk Ahmad
9. Nasir Ahmad
10. Hussain Bandi All sons and daughters of Late Abdul Quadir All
resident of Mohalla Mugalpur West Darwaja , P.O. & P.S. Aalamganj,
District - Muzaffarpur
11. Jhallu Sahni Son of Late Amal Lal Sahni
12. Sridhar Sahni Son of Late Bindeshwar Sahni
13. Gauri Sahni Son of Late Bindeshwar Sahni
14. Satrughna sahni Son of Late Uma Shankar Sahni
15. Ashrfi Sahni
16. Jangali Sahni
17. Bangali Sahni
18. Mahendra Sahni All sons of Late Mani Lal Sahni All residents of
Village Rasulpur Saiyed Salim , P.O. Bhikhanpur Kothi , P.S. Ahiyapur ,
District - Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER



5 24-08-2017 Heard learned counsel for petitioners as well as learned counsel appearing for opposite parties.

The present revision petition has been filed against order dated 09.07.2015 passed by learned Sub Judge-IV, Muzaffarpur in Title Suit No. 447 of 2011 by which he has rejected the petition filed under Order 7, Rule 11(d) of the C.P.C. on behalf of the petitioners on the ground of observations made by a coordinate Bench of this Court in C.W.J.C. No. 8737 of 2009 in which a liberty was granted to the parties of the aforesaid writ petition to move appropriate Civil Court of competent jurisdiction for any remedy that they may seek in accordance with law.

It would appear from the record that in pursuant to the aforesaid observation, the opposite parties filed Title Suit No. 447 of 2011 for declaration of their right and title over the suit land and also for correction of land records. The petitioners were made defendant in the aforesaid suit and they appeared and filed a petition under Order 7, Rule 11(d) of the C.P.C. mentioning therein that the aforesaid suit was hopelessly barred by law of limitation as well as other relevant laws and, accordingly, prayed for rejection of the plaint but learned Sub Judge rejected the aforesaid petition passing impugned order dated 09.07.2015.

Learned counsel for petitioners submits that as a



matter of fact the suit land was recorded in the name of Abdul Quadir in revisional survey and subsequently in consolidation preceding also the aforesaid lands were recorded in the name of said Abdul Quadir. Subsequently, petitioners purchased the aforesaid land through registered sale deed from Abdul Quadir. However, after several years opposite parties filed revision bearing Revision Case No. 05 of 2008 under Section 35 of Consolidation Act, which was allowed by Director, Consolidation and after that petitioners and some others challenged the order of Director, Consolidation in C.W.J.C. No. 8737 of 2009, which was allowed and the order of Director, Consolidation was set aside. However, this Court granted liberty to parties in the manner as earlier stated in this order. Learned counsel for petitioners further submits that no doubt this Court granted liberty to parties to move before appropriate Civil Court of competent jurisdiction but there was a rider that the aforesaid liberty could be exercised in accordance with law. He further submits that in the plaint of Title Suit No. 447 of 2011, the fact of filing of writ petition as well as observation of the writ court was mentioned but learned Sub Judge felt to take note of this fact rather he passed the impugned order only on the basis of observation given by this Court in C.W.J.C. No. 8737 of 2009 without considering the relevant facts of the case and,



therefore, it is a serious matter of non-consideration of facts and, therefore, the impugned order cannot sustain.

On the other hand, learned counsel appearing for opposite parties refuted the above stated submission arguing that writ court granted liberty to the parties of the aforesaid writ petition to seek their remedy before competent Civil Court and in pursuant thereto, the opposite parties filed above stated Title Suit for declaration of their right and title. Learned counsel further submits that moreover the point of limitation is a mixed question of law and fact and that can be decided only after taking evidence of both the parties and, therefore, the learned court below rightly rejected the petition filed under Order 7, Rule 11(d) of the C.P.C.

Learned counsel for the opposite parties tried to convince me that the learned court below had taken into consideration the other materials also while passing the impugned order but I am not at all convinced with the aforesaid submission because the impugned order itself goes to show that except the observation given by writ court in C.W.J.C. No. 8737 of 2009 nothing was considered by the learned court below. The learned court below has stated nothing though the parties had placed several points before the court below.

In view of the aforesaid submissions as well as taking



note of this fact that the learned court below rejected the petition filed under Order 7, Rule 11(d) of the C.P.C. only on the ground of observation given by the writ court in C.W.J.C. No. 8737 of 2009 without considering the aforesaid petition on the basis of materials available on the record and, therefore, in my view, the impugned order dated 09.07.2015 cannot sustain in the eye of law. Accordingly, this revision petition stands allowed and the impugned order dated 09.07.2015 is, hereby, set aside and the matter is remitted back to the court of Sub Judge-IV, Muzaffarpur with direction to him to pass a fresh order on the petition filed under Order 7, Rule 11(d) of the C.P.C. in accordance with law. It is also made clear that this order shall not prejudice to the court below while disposing of the above stated petition filed under Order 7, Rule 11(d) of the C.P.C. and the court below shall be at liberty to pass appropriate order on the aforesaid petition.

(Hemant Kumar Srivastava, J)

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