

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.113 of 2016

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1. Mohan Yadav
2. Shyam Yadav
3. Mukesh Yadav
4. Sharwan Yadav All 1 to 4 sons of late Banwari Yadav
5. Sonia Devi
6. Indu Devi @ Shakuntala Devi
7. Anita Devi
8. Bobi Devi All 5 to 8 daughters of late Banwari Yadav All 1 to 8 residents of Mohalla - Sahebganj, P.S. University, Town & District - Bhagalpur.

.... Petitioners

Versus

Sikandar Mandal son of late Phul Gena Mandal Resident of Village - Mohanpur (Nagra), P.S. Nathnagar, District - Bhagalpur.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar(ASG)

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2017

Heard Mr.Sanjay Kumar, learned counsel
appearing for the petitioners.

The present revision application has been filed
assailing the impugned order by which the learned court below has
turned down the prayer on behalf of the defendant-petitioners for
rejection of plaint under Order 7 Rule 11 C.P.C.

The learned counsel for the petitioner has
submitted that the prayer for rejection of plaint as made by the
petitioners is based upon two counts; firstly that the suit is barred by



res judicata and secondly it is barred by limitation. The learned counsel has placed the part portions of the plaint in order to substantiate his submissions.

After considering the submissions and the perusal of the impugned order, it is manifest that the plaintiff has filed the suit for declaration of title and confirmation of possession after setting aside the judgment and decree passed in earlier suit between the parties where the plaintiff was impleaded as minor defendant. It has been the case, as made out in the plaint, that the plaintiff's interest, as he was minor when the impugned decree was passed was not protected by his guardian. During the course of the submissions it could not be shown on behalf of the petitioners that even after accepting the entire averments made in the plaint to be correct, the suit would still be barred by limitation. The learned court below has held that the plea of limitation as raised by the defendants is a mixed question of law and fact, which shall be decided on the basis of evidence. In this view of the matter, this Court does not find that the learned court below has committed error of jurisdiction or illegality in passing the impugned order.

The revision application is accordingly dismissed.

At this juncture, the learned counsel for the



petitioners has made a prayer for grant of liberty to the petitioners to pray before the court for trying the two issues pertaining to the limitation as preliminary issue. It is observed that the present order shall not prejudice the rights of the petitioners to make appropriate prayer in the court below for trial of any of the issues as preliminary issue in accordance with law.

(V. Nath, J)

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