

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5383 of 2014

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1. Ram Bilas Yadav Son of Late Ram Sharan Yadav, resident of village –
Muktapur, Police Station Kalyanpur, District – Samastipur.

.... Petitioner/s

Versus

1. Lakshman Yadav Son of Late Ram Lakhan Yadav, resident of village –
Muktapur, Police Station Kalyanpur, District - Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan
For the Respondent/s : Mr. Sanjay Kr. Verma
Mr. Abhishek Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-02-2018

Let the supplementary affidavit filed on behalf of the
petitioner be kept on record.

2. This application has been filed for setting aside the
order dated 11.12.2013 passed by the learned Sub-Judge-I, Samastipur
in T.S. No. 141 of 2009 whereby and whereunder the learned court
below refused to call for the records of T.S. No. 78 of 2001 from the
court of learned Civil Judge, Junior Division-I, Samastipur.

3. Heard learned counsels for the petitioner as well as
the respondent.

4. The petitioner is plaintiff of Title Suit No. 141 of
2009 and prior to filing of this suit, he had filed a Title Suit No. 78 of
2001 for declaration of his title over the suit property. The respondent



appeared in the said suit and filed his written statement. In course of trial, both the parties examined their witnesses and adduced documentary evidences. At the time of argument, the petitioner filed an amendment petition on 02.05.2009 and raised objection as regards pecuniary jurisdiction of the court by mentioning the value of property to the tune of Rs.25,000/-. The learned Additional Munsif, considering the suit beyond the pecuniary jurisdiction of the court, rejected the amendment petition and directed the office to return the plaint for filing the same in competent court having its pecuniary jurisdiction. After return of plaint, the petitioner presented the same in the court of learned Sub-Judge which has been registered as T.S. No. 141 of 2009. The respondent filed his written statement. The contention of learned counsel for the petitioner is that in course of trial, both the parties have already adduced their evidence and so in order to save the precious time of the court, the records of T.S. No. 78 of 2001 are necessary to be called for as the suit has to be decided on the same pleading and documents. In this regard, the learned counsel for the petitioner cited ruling reported in 2012 (4) BLJ 63.

5. The learned counsel for the respondent on the other hand submits that both the parties have already withdrawn their documents from the court of learned Munsif and so no fruitful purpose would be served by calling for the records of T.S. No. 78 of



2001 and so the impugned order does not require any interference.

6. On perusal of documents on record I find that both the parties are contesting the suit on the same pleading, evidence and documents, which were produced before the learned Munsif. The only objection raised by the respondent relates to pecuniary jurisdiction of the court on account of which the court below returned the plaint to the petitioner. The evidence of parties so adduced would also hold good if it is found at the time of hearing, as the suit has to be decided by a court in the rank of Sub-Judge. If the record of T.S. No. 78/2001 is called for, the same would not prejudice the defendant-respondent in any way.

7. In view of above facts, the impugned order refusing to call for the record of T.S. No. 78 of 2001 is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.02.2018
Transmission Date	

