

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21349 of 2012

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1. Abdul Kuddus S/O Late Wzed Rahman, resident of village Kolhan, Post Office Kharsota, Police Station Azamnagar, District Katihar.
 2. Md. Ibrahim S/O Late Wzed Ali, resident of village Kolhan, Post Office Kharsota, Police Station Azamnagar, District Katihar.
 3. Mukhtar Hussain @ Mukhtar Ali S/O Late Wzed Ali, resident of village Kolhan, Post Office Kharsota, Police Station Azamnagar, District Katihar.
 4. Abdul Samad S/O Late Wzed Ali, resident of village Kolhan, Post Office Kharsota, Police Station Azamnagar, District Katihar.
 5. Soyebur Rahman @ Saibur Rahman S/O Late Wzed Ali, resident of village Kolhan, Post Office Kharsota, Police Station Azamnagar, District Katihar.

.... Petitioners

Versus

1. Jyotish Chandra Kumar S/O Late Bihari Lal Karmkar resident of village Kharsota, Police Station Azamnagar, District Katihar.
2. Smt. Mithu Karmkar W/O Sri Sunil Karmkar D/O Jyotish Chandra Karmkar resident of village Kastor, P.S. Gajol, District Malda (W. Bengal).
3. Kaushik Sharma S/O Swaroop Sharma (Minor) representative through next friend and guardian Plaintiff No. 1 Jyotish Chandra Kumar As Nana (Grand Father) resident of village Kharsota, Police Station Azamnagar, District Katihar.
4. Smt. Anju Karmkar W/O Apu Karmkar D/O Jyotish Chandra Karmkar resident of village & Post Office Balupur, Police Station Taua, District Malda (W.B.).
5. Sk. Islam S/O Late Lohbat resident of village Damodarpur, Police Station Azamnagar, District Katihar.
6. Sri Raj Kumar Chakraborty S/O Late Radhendra Nath Chakraborty resident of Mohalla New Market, Dr. Ranjan Prasad Path, Post Office and Police Station Katihar, District Katihar.
7. Utsah Chakraborty D/O Late Radhendra Nath Chakraborty resident of mohalla New Market, Dr. Ranjan Prasad Path, Post Office and Police Station Katihar, District Katihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-08-2018

Petitioners before this court are defendants of Title Suit

No.93 of 2009 pending in the court of Subordinate Judge-I, Katihar.

This writ application has been filed for quashing the order dated



23.08.2012 passed by court below whereunder the petition filed by the petitioners under Order 14 Rule 2 of C.P.C. to hear the suit on preliminary issue was dismissed.

2. Heard learned counsels for the petitioners and the respondents.

3. The respondents before this court have filed the aforesaid suit for declaration of five sale deeds purported to be executed by father of defendants 2nd party in favour of petitioners are forged and fraudulent. The plaintiffs have further sought relief for declaration that the defendants 1st party, who are petitioners before this court, have not acquired right, title or possession over the suit property on the basis of alleged sale deeds. The plaintiffs have further sought some ancillary reliefs.

4. The defendants appeared and filed written statement. They filed a petition to decide the maintainability of the suit which after hearing was rejected.

5. On going through the averments made in the plaint and written statement, I find that the plaintiffs have claimed title on the basis of registered sale deeds which are alleged to be executed by recorded tenant. The defendants, on the other hand, claim title on the basis of five registered sale deeds purported to be executed by recorded tenant in favour of their vendors. The issue involved in the



suit is a mixed question of law and fact and it can be decided by the court only in course of trial. The impugned order of court below although is very cryptic but when I consider the pleadings of both parties in plaint and written statement I find that the order rejecting the prayer of petitioners to decide the suit on preliminary issue does not suffer from any illegality.

6. In view of above discussions, I do not find any merit in this writ application and is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2018
Transmission Date	

