

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.715 of 2018

1. Laxmi Ray Son of Yogi Ray
2. Sajjan Kumar Ray son of Madan Lal Bhagat both are residents of village - Kasbe Ahar, P.S. - Tajpur, District - Samastipur.

... .. Petitioners

Versus

1. Rakesh Kumar Son of Late Jiwachh Prasad Sah resident of village Kasbe Ahar, P.S. Tajpur, District Samastipur.
... ..Respondent 1st Set
2. Sandeep Kumar Agarwal @ Tantan Agrawal son of late Maheshwar Prasad Agarwal, resident of village Kasbe Ahar, P.S. Tajpur, District Samastipur.
... ..Respondent 2nd Set
3. Nawal Kishor Sah son of Late Sonelal Sah Resident of Village - Methurapur, P.S. Tajpur, District - Samastipur.
4. Kapildeo Upadhyay son of late Yugual Kishor Upadhyay resident of village - Kasbe Tajpur, P.S. Tajpur, District - Samastipur.
5. Shankar Singh son of late Ramashish Singh Resident of Village - Srichandpur Kothiya, P.S. N.H. Bangara, District - Samastipur.

... .. Performa Respondents

Appearance :

For the Appellant/s : Mr. Rana Ishwar Chandra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 27-09-2018

Heard the learned counsel for the petitioners.

2. The petitioners filed this civil miscellaneous petition against the order dated 26.02.2018, passed by the learned Civil Judge (Junior Division)-1st, Samastipur in Title Suit No.12 of 2014 whereby the learned Civil Judge (Junior Division)-1st, Samastipur dismissed the petition of the petitioners filed under Sections 10 and 11 of the Code of Civil Procedure has been dismissed.

3. Facts, which are almost admitted and relevant for disposal of this case can be reproduced as follows:



The plaintiff, Jiwachh Prasad Sah filed Title Suit No.11 of 1971 for setting aside the sale deed executed by his vendor, Sheo Chandra Sah @ Nand Lal Sah in favour of Maheshwar Prasad Agrawal on 08.06.1970. The said land was sold to the wife of the plaintiff and the plaintiff came in possession over the land. Title Suit No.11 of 1971 was dismissed. The plaintiff Jiwachh Prasad Sah filed Title Appeal No.10 of 1986 against the judgment and decree passed in Title Suit No.11 of 1971. The Title Appeal No.10 of 1986 was allowed and the sale deed executed by Sheo Chandra Sah @ Nand Lal Sah in favour of Maheshwar Prasad Agrawal is set aside. The legal heirs of Maheshwar Prasad Agrawal filed Second Appeal No.146 of 2013. After filing the Second Appeal, heirs of Maheshwar Prasad Agrawal executed sale deed with regard to the same land in favour of the petitioners. Thereafter the plaintiff, heirs of Jiwachh Prasad Sah filed Title Suit No.12 of 2014 for perpetual injunction for restraining the defendants. In the present suit, the petitioners filed WS and also filed petition under Sections 10 and 11 of the CPC which has been dismissed by the impugned order.

4. The learned counsel for the petitioners submits that the suit is not maintainable as in sum and substance the issues in the earlier suit, i.e., Title Suit No.11 of 1971 is the same and similar and, therefore, the suit is barred by principle of res-judicata as well as the further proceeding in the suit should have been stayed under Section



10 of the CPC but I find that the petitioners were not the parties in Title Suit No.11 of 1971. The petitioners purchased the suit land from the appellants of Second Appeal No.146 of 2013 by virtue of a registered sale deed executed in the year 2013. The appellants of Second Appeal No.146 of 2013 got the land by virtue of a sale deed executed by Sheo Chandra Sah in favour of Maheshwar Prasad Agrawal in the year 1970 and the same sale deed was set aside on the ground that Sheo Chandra Sah had earlier executed sale deed with regard to the same land in favour of Jiwachh Prasad Sah and the cancellation of the sale deed executed in favour of Jiwachh Prasad Sah was found to be illegal. On such facts, the petitioners sought perpetual injunction against the petitioners from interfering into the peaceful possession of the plaintiff, therefore, I find that in sum and substance the issue in Title Suit No.12 of 2014 is not same and similar in Title Suit No.11 of 1971 and Second Appeal No.146 of 2013, therefore, I do not find any merit in this civil miscellaneous petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.10.2018
Transmission Date	NA

