

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21464 of 2011

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1. Kapileshwar Singh, son of Late Raj Kumar Shubheshwar Singh, resident of Rambag Palace, P.O. -Lalbag, P.S.- L.N.M.U. Campus Ward No. 6, Anchal and Distt. Darbhanga.
 2. Rajeshwar Singh son of Late Raj Kumar Shubheshwar Singh, resident of Rambag Palace, P.O. -Lalbag, P.S.- L.N.M.U. Campus Ward No. 6, Anchal and Distt. Darbhanga.

.... Petitioners

Versus

1. Ratneshwar Singh son of Kumar Yajneshwar Singh, resident of Bangla No. 9, G.M. Road, Raj Kumarganj, P.O. Lalbag, P.S. Town Distt.- Darbhanga
2. Kumar Yajneshwar Singh son of Late Rajabahadur Kumar Visheshwar Singh
3. Rajneshwar Singh son of Kumar Yajneshwar Singh, resident of mohalla- Raj Kumarganj (Rashmi Niwas) Ward No. 6, P.O.-Lalbag, Anchal & Distt. - Darbhanga.
4. The State of Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Lovekush Kumar, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-10-2018

Petitioners before this court are defendants 1st party in Title Suit No.55 of 2006 pending in the court of learned Sub-Judge I, Madhubani. They have filed this writ application for quashing the order dated 24.09.2011 whereby and whereunder the learned court below refused to decide the suit on preliminary issue.

2. Heard learned counsel for the petitioners. Nobody appeared for the respondents.

3. It appears that the respondent no.1 filed the suit against



these petitioners and other defendants for declaring him as trustee of Rajnagar Religious Trust Properties on the basis of Babuana Grant dated 23.07.1929 and further that any paper with respect to trusteeship of the said religious trust produced by defendant no.1 be declared as void and not binding on the plaintiff.

4. The learned counsel for the petitioners submitted that the father of these petitioners had filed Title Suit No.08 of 1996/140 of 2000 against the father of respondent no.3 for declaration that he is the rightful and legal trustee of the trust covered by deed of Babuana dated 23.07.1929 executed by His Highness Maharajadhiraj Kameshwar Singh Bahadur, Maharajadhiraj of Darbhanga. The said suit was contested by the father of respondent no.3. The present plaintiff has filed the suit for declaration of his right and adjudication of real trustee on the basis of registered deed which was also the subject matter of Title Suit No.08 of 1996/140 of 2000. The said suit was contested and decreed in favour of father of these petitioners as per judgment dated 19.12.2000 passed by Sub-Judge III, Madhubani. The court below without considering the case of the parties and the judgment delivered in Title Suit No.55 of 2006 has rejected the petition observing that the plea of res-judicata includes a mixed question of law and facts. This observation of court below is against the material on record. The issue which has been raised in this suit



had already been adjudicated by the civil court in Title Suit No.08 of 1996/140 of 2000. The petitioners have filed copy of judgment passed in earlier suit to show that there is no need to lead evidence of the parties for deciding the fact. The learned court below has thus committed error in not looking into the contested judgment which has already been decided between the ancestors of both the parties.

5. In view of above facts, the impugned order is set aside and this writ application is allowed. The court below is directed to decide the issue of *res-judicata* on the basis of plaint, written statement and the judgment passed in Title Suit No.08 of 1996/140 of 2000 before deciding the other issue by a reasoned order.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.10.2018
Transmission Date	

