

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.48 of 2017**

Tej Narain Rai @ Tej Narain Ray & Ors

... .. Appellant/s

Versus

The State Of Bihar & Ors

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar
For the Respondent No.1:		Mr. Raj Kishore Roy- GP18
For the respondent No. 2 to 4:		Mr. Vikash Kumar

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

3 19-11-2018 Heard Mr. Jitendra Kishore Verma, the learned counsel for the petitioners, Mr. Vikash Kumar, the learned counsel for respondent No. 2 to 4 and Mr. Raj Kishore Roy, learned GP 18 for respondent No.1.

The petitioners have filed this Civil Misc. petition being aggrieved by the order dated 27.09.2016 passed in Title Suit No. 34 of 2012 by which the court ordered for adducing evidence to decide the preliminary issue about the maintainability of the suit.

The learned counsel for the petitioners submits that petitioners purchased one Katha and 10 dhurs of land of plot No. 940 from the recorded tenant and filed the suit for declaration of title and confirmation of possession. The suit for declaration of title and confirmation of possession is not barred



under Section 16 of Bihar Public Land Encroachment Act, 1956. The suit is not decided on the preliminary issues. The court directed the parties to adduced evidence. The preliminary issue cannot be decided after adducing any evidence. If the suit is barred under any statute only then the suit can be decided after framing preliminary issues.

On the other hand, the learned counsel for the respondent No. 2 to 4 submits that in view of provision as contained in Section 16 of Bihar Public Land Encroachment Act, 1956 the suit is not maintainable.

Having considered the submission of both sides, I find that the petitioners purchased land measuring one Katha and 10 dhurs of C.S.P. No. 940. Other recorded tenants of the aforesaid land, of course, gifted the property in favour of the school but the petitioners claimed title by virtue of sale deed executed by recorded tenant and from perusal of the order of Circle Officer, on which the learned counsel for the respondent No. 2 to 4 relies, it does not appear that the Circle Officer got the land measured. The Circle Officer disbelieved the case of the petitioners in a land encroachment case on the ground that the land was gifted to school by some of the recorded tenants. Therefore, I find that the learned Sub Judge has committed



jurisdictional error in fixing the case for hearing on preliminary issue whether the suit is barred under Section 16 of Bihar Public Land Encroachment Act, 1956 without appreciating the facts that the suit is for declaration of title and confirmation of possession on the basis of sale deed executed by recorded tenant in favour of the petitioners. Accordingly, the order dated 27.09.2016 passed in Title Suit No. 34 of 2012 is set aside. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

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