

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.226 of 2016

In
CIVIL MISCELLANEOUS JURISDICTION No.257 of 2016

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Smt. Chinta Devi, Wife of Sri Anuj Prasad, Resident of Village/Mohalla Road No.13B, Rajendra Nagar, P.S. Bahadurpur, District Patna.

... .. Petitioner

Versus

1. Sri Prabhu Narayan Singh, Son of late Rameshwar Singh, Resident of Village/Mohalla Road No.13B, Rajendra Nagar, P.S. Bahadurpur, Patna City, District Patna.
2. Sri Birendra Prasad Sinha, Son of late Ambika Prasad Sinha, Resident of Mohalla Road No.13B, Rajendra Nagar, P.S. Bahadurpur, Patna City, District Patna.
3. Smt. Kanchan Kumari Sinha, Wife of Sri Ashutosh Kumar Sinha, Resident of Mohalla Road No.13B, Rajendra Nagar, P.S. Bahadurpur, Patna City, District Patna present at H/30 Mahatma Gandhi Nagar, P.S. Agamkuan, Patna-20.
4. Smt. Indu Kumari, Wife of Sri Anil Kumar, Residing at Road No.13B, Rajendra Nagar, P.S. Bahadurpur, Patna City, District Patna and present at H/30 Mahatma Gandhi Nagar, P.S. Agamkuan, Patna-20.

... .. Plaintiffs/Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 05-09-2018

Heard the learned counsel for the petitioner.

2. The petitioner has filed this civil revision petition against the order dated 23.04.2016, passed by Sub-Judge-III, Patna City in Title Suit No.290 of 2010 by which the petition of the petitioner filed under Order VII Rule 11 read with Order XIV Rule 2 and Section 151 of the CPC for dismissing the suit has been dismissed.



3. Petitioner is the defendant in the court below. The plaintiff filed a suit and sought for the relief to declare that the passage shown in the attached map A with red colour marked ABCD and fully described in Schedule I of the plaint as common passage for public road and no person is entitled to encroach its length and width in any manner and further sought for the relief to direct the defendant to remove the encroachment upon common passage described in Schedule I of the plaint within a reasonable period. The plaintiff has stated in his plaint that the land owners and the purchasers had to leave 7' lands from their own purchased land to make a common rasta/passage of 14 feet wide. Accordingly, the land owners left land measuring 7' east to west up to the land of the plaintiff no.1 in the eastern side and as such Sukhdeo Prasad had also left 7 feet from his purchased 2 kathas of land and as such 14 feet wide east to west passage came in existence up to the land and house of the plaintiff no.1. The defendant filed petition under Order VII Rule 11 to dismiss the suit as a proceeding under Section 133 Cr.P.C. was initiated at the instance of the plaintiff but the proceeding was dropped on the ground that there is no public road. Thereafter the plaintiff filed CWJC No.6119 of 2013 but the writ petition was also disposed of with a direction to dispose of the title suit filed by the plaintiff. I



find that the learned Sub-Judge has rightly held that since 14 feet passage from east to west were left by the purchasers and owners of the land for their own egress and ingress and that passage does not belong to public road, therefore, any finding recorded in the proceeding under Section 133 Cr.P.C. shall not bar the institution of the suit and the findings has got no bearing on the fate of the suit, therefore, I find no force in the submissions of the learned counsel for the petitioner that the suit is barred under Order VII Rule 11 of the C.P.C.

4. Accordingly, this civil revision petition is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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