

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15906 of 2014

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Ajay Kumar Son of Sri Hari Mahto, Resident of Village - Harobigha, Barahgawn,
Police Station Islampur, District – Nalanda.

.... Petitioner/s

Versus

1. Sujeet Kumar Son of Sri Jitendra Sharma
2. Shiv Raj Minor Son of Sujeet Kumar under the guardianship of his father Sri
Sujeet Kumar, both residents of village - Barahgawan, Police Station - Islampur,
District – Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Jagdish Prasad and Ashok Kumar, Advs.

For the Respondent/s : Mr. Bishwa Nath Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 16-04-2018

The petitioner has filed this application for setting aside the order dated 10.06.2014 passed by Sub-Judge-II, Hilsa, Nalanda in Title Suit No. 9 of 2012 whereby and whereunder the learned court below refused to reject the plaint filed under Order VII Rule 11 of the Code of Civil Procedure.

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

3. The plaintiffs-respondents filed the aforesaid Title Suit No. 9 of 2012 for declaration of their title over the land mentioned in schedule-VI of the plaint. The plaintiffs-respondents sought relief for recovery of possession and permanent injunction against the defendants from causing any interference in peaceful



possession of the plaintiffs. The case of plaintiffs is that the suit land is their ancestral land and the interference of defendants on the basis of oral exchange is illegal and baseless. The defendants have not acquired right and title on the basis of alleged oral exchange followed by mutation order. The oral exchange propounded by defendants is fraudulent, fabricated and not binding on the plaintiffs. The defendants filed written statement denying the case of plaintiffs. The contesting defendants have filed a petition praying therein to dismiss the suit as not maintainable. According to petitioner, the disputed lands are coming in peaceful possession of the defendants as per exchange between the ancestors of the parties. The jamabandi was also created in the name of defendants and they are paying rent since several years. The defendants have obtained Land Possession Certificate with respect to the said land. The plaintiffs have not challenged the order of Circle Officer who mutated the name of the petitioner and so the said order is final and binding on the plaintiffs. The suit of the plaintiffs is not maintainable and so the plaint is fit to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

4. After hearing and perusing the pleadings of both the parties, I find that the plaintiffs have filed the aforesaid suit for declaration of their title over the land mentioned in schedule-VI of the plaint. The suit property undoubtedly is ancestral property. The



defendants assert that the ancestor of the defendants got the suit land by virtue of oral exchange. The plaintiffs on the other hand deny the case of oral exchange. They have stated that the defendants fraudulently got the land mutated in their favour and so the same is not binding on the plaintiffs. The court below after hearing both sides, has rejected the petition of the plaintiffs by a reasoned order. The points raised by defendants cannot be adjudicated as per preliminary issue. The issue of maintainability of suit is a matter of law and facts which can be decided only after settlement of issue and fullfledged trial. The court below, after rejecting the petition, has directed both the parties to proceed for settlement under the provision of section 89 of Code of Civil Procedure. The petitioner will have liberty to raise the issue of maintainability of the suit at the time of trial.

5. In view of above facts, I find that the court below has not committed any jurisdictional error in rejecting the petition of defendants. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19/04/2018
Transmission Date	

