

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1865 of 2017

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1. Manoj Kumar Jha, Son of Late Sachchidanand Jha,
 2. Bijay Kumar Sinha, Son of Late Yamuna Prasad, Both residents of Mohalla- Sikandarpur Ahmad Ali Lane, P.O. Mirjanhat, P.S. Mojahidpur, District- Bhagalpur.
 3. Anil Kumar Sinha, Son of Late Yamuna Prasad Resident of Mohalla- Sikandarpur, Baddo Lal Lane, P.O.- Mirjanhat, P.S.- Mojahidpur, District- Bhagalpur.

.... Petitioners

Versus

1. Chandra Shekhar Jha, Son of Late Gobardhan Jha, resident of Mohalla Sikandarpur, Baddo Lal Lane, P.O.- Mirjanhat, P.S. Mojahidpur, District- Bhagalpur.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Manoj Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 01-08-2018 Heard learned counsel for the petitioners.

The petitioners are the defendants in the court below.

The Plaintiff/respondent filed suit for right of easement over the land of the respondent. The petitioners filed petition under Order 7 Rule 11(d) of the C.P.C. stating therein that they filed Title Suit No.61/1987 for declaration of title and confirmation of possession over Plot No.526, 527 of Khata No.775 against the wife of the plaintiff and others. The suit was disposed of on compromise and the defendants therein admitted the title of the petitioners. Therefore, the present suit for right of easement is not maintainable in view of the provision as contained under Order 7



Rule 11(d) of the C.P.C. a proceeding under Section 133 Cr.P.C. was also initiated but the Sub Divisional Magistrate found no public nuisance and dropped the proceeding holding that the lands are left by the petitioners for their own use and the same are not used by other persons including the sole respondent. Thereafter, the respondent filed the suit but the learned Munsif rejected the petition of the petitioners for dismissing the suit under Order VII Rule 11 (d) of the C.P.C.

Having considered the submissions and on perusal of the record, I find that earlier the Title Suit No.61/1987 was filed by the petitioners for declaration of title over the disputed land against the wife of the plaintiff/respondent. The suit ended in compromise and the defendants of Title suit No.61/1987 admitted the title and possession over the land of the plaintiff but the present suit is filed for right of easement and the plaintiff has stated that they have been using the lands for their egress and ingress and on such, their right of easement over the property be declared but title of the land is not in dispute. The right of easement is claimed only over the land of others by virtue of continuous use of the lands for egress and ingress of the parties and on the basis of judgment in which title of a party was declared, the suit for right of easement cannot be dismissed under



Order 7 Rule 11(d) of the C.P.C.

Thus, I do not find any jurisdictional error or illegality in the order impugned. Accordingly, this Civil Miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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