

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.292 of 2019

1. Most. Anusuiya Sharma wife of Late Shyam Sundar Sharma
2. Manoj Kumar Joshi son of Late Shyam Sundar Sharma
3. Deepak Kumar Joshi son of Late Shyam Sundar Sharma
4. Samta Kumari daughter of Late Shyam Sundar Sharma and Wife of Manoj Khemani
All resident of Mohalla- Girls School Road, Amla Tola, Old Municipal Ward No. 8, New Ward No. 10 of Katihar Municipality, District- Katihar.
5. Om Prakash Sharma son of Sanwar Mal Sharma
6. Komal Sharma daughter of Om Prakash Sharma
7. Sneha Sharma daughter of Om Prakash Sharma
8. Samurth Sharma son of Om Prakash Sharma
Serial No.5 to 8 are resident of Arya Samaj Road, Chhatauni Chowk, P.S.- Motihari, District- East Champaran.

... .. Plaintiffs/Petitioners

Versus

1. Gokulanand Das son of Devanand Das
2. Dayanand Das son of Late Vardhanand Das
Both are resident of Mohalla- Bania Tola, P.S.and District- Katihar.
3. Samir Kumar Das son of Late Vardhanand Das
4. Krishna Nand Das sn of Vardhanand Das
5. Most.Meena Das wife of Late Vardhanand Das
Serial No.3 to 5 are resident of Mohalla-Bania Tola, P.S.and District- Katihar.

Defendant 1st Party/Opp.1st Party

6. Md. Israil son of Md. Samsuddin Resident of Mohalla, P.O., and P.S.- Pakur, District- Sahebganj.
7. Firdosi Begum wife of Md. Jamil, Resident of Chaudhary Mohalla, P.S. and District Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dhirendra Kumar Jha, Advocate
For the Respondent/s : Mr.Rama Nand Poddar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-05-2019

Heard learned counsel for the petitioner.



2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 05.10.2018 passed by the learned Sub-Judge-VI, Katihar in T.S. No. 82 of 2000 by which the petition dated 31.08.2018 filed by the plaintiffs-petitioners for allowing them to adduce evidence as the defendant of counter claim made by the defendant nos. 6 and 7 has been rejected.

3. Learned counsel appearing for the plaintiffs/petitioners submitted that the order impugned passed by the trial court is illegal, arbitrary and without jurisdiction. It failed to appreciate that the case of the plaintiffs/petitioners shall be seriously prejudiced in view of the denial of right to lead evidence in response to the counter claim of the defendant nos. 6 and 7. The plaintiffs-petitioners have a right to adduce evidence as a defendant in the counter claim made by the defendants in the suit. The court below, while passing the impugned order, failed to appreciate the real purport of Order-8 Rule-6A of the Code of Civil Procedure (for short 'CPC'), which provides that the counter claim shall be treated as a plaint and governed by the rules applicable to the plaint.

4. On perusal of the record, I find that the plaintiffs-petitioners filed Title Suit No. 82 of 2000 for declaration of



confirmation of possession over the suit land among other reliefs claimed by them. After filing of the title suit defendant nos. 1 to 5 executed a sale deed in respect of the property in question to defendant nos. 6 and 7. The plaint was amended in view of new developments. After the service of the summons, defendant nos. 1 to 5 appeared and filed their written statement denying the title of the plaintiffs alleging that the story of settlement in the name of Kunj Bihari Lal and Gogo Devi is totally false. They also pointed out that such transactions are barred under Section 4 of the Benami Transaction Act. After amendment, defendant nos. 6 and 7 were impleaded as party. They also appeared and filed their counter claim. The plaintiffs-petitioners filed objection to the counter claim filed by defendant nos. 6 and 7. After hearing the parties, the court below allowed the counter claim and treated the same to be plaint on behalf of the defendant nos. 6 and 7. After hearing the parties, the trial court rejected the petition filed by the plaintiffs-petitioners vide impugned order dated 05.10.2018. The operative part of the impugned order dated 05.10.2018 passed by the trial court reads as under:-

"On perusal of the record, it is transpired that the plaintiffs brought this suit for the declaration of their title over the suit land as well as for the confirmation of their



possession over the same. This suit was originally brought by the plaintiffs against the defendants No.1 to 5 and later the defendants No.6 and 7 were added as defendants. Here the defendants claimed the suit property by virtue of the sale deed through the defendants No.1 to 5 who claimed to be the owner of the suit property and the same was transferred to the defendants No. 6 and 7. Herein the claim of the defendant Nos. 6 and 7 is through the defendants Nos. 1 to 5, i.e. the defendants first party and the plaintiffs have already adduced their evidence and thereafter the evidence of the defendants also have been concluded and the case was fixed for final arguments vide order dated 18.08.2018. Besides this the Hon'ble court vide order dated 03.07.2017 passed in Civil Misc. No. 353 of 2017, however allowed the amendment as prayed but that was subject to condition that the plaintiffs shall not be entitled to lead the further evidence in the suit after amendment. With the foregoing reasons, the court holds that the application under consideration is devoid of any merit in itself and the same is hereby dismissed. "



5. It would be pertinent to note here that after the impleadment of respondent nos. 6 and 7, when the plaintiffs-petitioners had filed an application before the court below for amendment in the plaint, the same was rejected by the trial court, vide order dated 09.09.2016 on the ground of delay and absence of due diligence. Thereafter, Civil Misc. Case No. 353 of 2017 was filed by the plaintiffs-petitioners before this Court for setting aside the aforesaid order dated 09.09.2016. The said civil miscellaneous was allowed by this Court, vide order dated 03.07.2017 with the consent of the parties as the counsel for the petitioners had taken a categorical stand that the plaintiffs-petitioners are not intending to lead any further evidence in the suit.

6. The operative part of the order dated 03.07.2017 passed in Civil Misc. No. 353 of 2017 reads as under:-

" In view of the aforesaid stand on behalf of the parties and after considering the submission, this application is allowed, impugned order is set aside and the petition dated 09.09.2016 filed on behalf of the plaintiffs for amendment is allowed subject to the condition that the plaintiff-petitioners shall not be entitled to lead further evidence in the suit after the amendment."

(emphasis supplied)



7. Once the plaintiffs-petitioners had themselves undertaken before this Court that they would not lead any further evidence in the suit after amendment and their application dated 09.09.2016 filed for amendment was allowed by this Court subject to the condition that they shall not be entitled to lead further evidence in the suit after the amendment, no illegality can be found with the order impugned passed by the court below, whereby the application of the plaintiffs-petitioners for leading further evidence was rejected.

8. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2019
Transmission Date	N/A

