

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20321 of 2010

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SMT.KANTI DEVI W/O Ram Chandra Prasad Shahi R/O Village - Satha,
P.S. - Lalganj, District - Vaishali

... .. Petitioner/s

Versus

1. VIJAY KUMAR SINHA @ GYAN KUMAR S/O Late Gauri Shankar Prasad Sinha R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
2. Dhyan Kumar Sinha S/O Late Gauri Shankar Prasad Sinha R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
3. Sanjau Kumar Sinha S/O Late Gauri Shankar Prasad Sinha R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
4. Rani Devi W/O Late Uma Shankar Prasad R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
5. Poonam Kumari D/O Late Uma Shankar Prasad R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
6. Ranju Kumari D/O Late Uma Shankar Prasad R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
7. Madhuri Sinha W/O Suresh Kumar Ambastha R/O Village - Mirzapur Bandaur Known As Bishanpur, P.O.- Bishanpur, P.S. And District - Begusarai
8. Nirmala Sinha W/O Sita Ram Prasad R/O Village - Raghunandanpur, P.S. Teghara, District - Begusarai
9. Renu Sinha W/O Manaohar Prasad Sinha R/O Village - Mirzapur Bandaur Known As Mohalla -Bishanpur, P.S. - Bishanpur, P.O. And District - Bishanpur, District - Begusarai
10. Manju Sinha W/O Nageshwar Prasad Verma R/O Village - Mirzapur Bandaur Known As Mohalla -Bishanpur, P.S. - Bishanpur, P.O. And District - Bishanpur, District - Begusarai
11. Smt. Rita Sinha W/O Awadh Bihari Prasad R/O Village - Mirzapur Bandaur



- Known As Mohalla -Bishanpur, P.S. - Bishanpur, P.O. And District - Bishanpur, District - Begusarai
12. Smt. Sanju Sinha W/O Sri Navin Kumar And D/O Late Gauri Shankar Prasad Sinha R/O Village - Mirzapur Bandaur Known As Mohalla -Bishanpur, P.S. - Bishanpur, P.O. And District - Bishanpur, District - Begusarai
13. Ram Chandra Prasad Shahi S/O Late Sadhu Sharan Shahi
14. Murari Prasad Shahi @ Murai Shahi S/O Ram Chandra Prasad Shahi R/O Village - Satha, P.S. - Lalganj, District - Vaishali
15. Pankaj Kumar Shahi S/O Ram Chandra Prasad Shahi R/O Village - Satha, P.S. - Lalganj, District - Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajit Kumar
Mr. Shailendra Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 05-07-2019

The present writ petition has been filed against the order dated 24.9.2010 passed by the learned court of Sub-Judge IV, Begusarai in Title Suit No. 6 of 1996 whereby and whereunder the petition filed by the defendant-petitioner herein dated 18.3.2004, in pursuance of the order dated 19.2.2004 passed in M.J.C. No. 1257 of 2001 by a coordinate Bench of this Court, directing for framing a preliminary issue regarding the maintainability of Title Suit No. 6 of 1996, has been dismissed without any reason.

2. The brief facts of the case are that a title suit bearing Title



Suit No. 6 of 1996 was preferred by the respondents herein before the learned trial court wherein the petitioner herein has been arrayed as a defendant. The petitioner herein had then raised an issue of maintainability before the learned trial court, however, the learned trial court by an order dated 23.5.2000 passed in Title Suit No. 6 of 1996 had rejected the said petition of the petitioner herein. The petitioner had then challenged the aforesaid order dated 23.5.2000 before this Court by filing a petition bearing Civil Revision No. 1858 of 2000, however, the same stood dismissed on account of default, nonetheless, when the petitioner had filed a petition for restoration of the said revision petition, a coordinate Bench of this Court by an order dated 19.2.2004 had virtually allowed the case of the petitioner in the following terms:-

“Having the same set of interest two suits were filed. First the subsequent suit, this is title suit no. 6 of 1996, pending before the sub Judge-III, Begusarai. This suit has been filed by the plaintiffs and some others with them who are also in the first suit i.e., title suit no. 72 of 1974. Against the judgment and decree in title suit no. 72 of 1974, a First Appeal No. 756 of 1985 has been filed at the High Court and is pending.

If the issues between the two suits are the same and the parties are not uncommon and the plffs. have a common interest then either party will have a right to apply in title suit no. 6 of 1996 that a preliminary issue be framed under order XIV, whether the title suit no. 6 of



1996 is maintainable or not should any of the parties choose to seek the preliminary issue this may be done within one month of this order having placed and filed before the court where the title suit no. 6 of 1996 is pending. Once the preliminary issue has been framed, it shall be determined within three months.”

3. Thereafter, the petitioner had filed a petition dated 18.3.2004 before the learned trial court stating therein that the suit in question i.e. Title Suit No. 6 of 1996 has been filed by the plaintiffs and some others who are also parties to the earlier suit bearing Title Suit No. 72 of 1974 which though has been decreed but a First Appeal bearing F.A. No. 756 of 1985 is pending before the Hon'ble High Court, hence, it is required that in cases where the issues between the two suits are the same and the parties are common as well as the plaintiffs have a common interest, this Court may frame a preliminary issue regarding the maintainability of the suit itself.

4. The aforesaid petition dated 18.3.2004 was kept pending by the learned trial court for almost six years and thereafter, by a cryptic, un-reasoned and unjust order dated 24.9.2010, the said petition of the petitioner dated 18.3.2004, has been rejected.

5. The learned counsel for the petitioner submits that the impugned order dated 24.9.2010, passed by the learned trial court in Title Suit No. 6 of 1996 is not only in teeth of the



directions given by a coordinate Bench of this Court vide order dated 19.2.2004 passed in M.J.C. No. 1257 of 2001, but is also a non-speaking and un-reasoned order showing non-application of mind by the learned trial court.

6. I have heard the learned counsel for the petitioner and a bare perusal of the impugned order dated 24.9.2010 shows that no reason whatsoever has been assigned in rejecting the petition of the plaintiff dated 18.3.2004 and merely, it has been stated “that the case record is not fulfilled the requirement of order of the Hon'ble High Court passed in M.J.C. No. 1257 of 2001, hence, the petition dated 13.4.2005 and the one dated 18.3.2004 filed on behalf of the defendant no. 1 stands rejected”. Thus, this Court finds that the impugned order dated 24.9.2010 passed by the learned Sub-Judge IV Begusarai is a perverse and cryptic order, which does not show any application of mind by the learned Sub-Judge IV, hence, the same is quashed and the matter is remanded back to the learned trial court to decide the aforesaid petition filed by the petitioner dated 18.3.2004, as followed by another petition dated 13.4.2005, afresh within a period of eight weeks from the date of receipt / production of a copy of this order.

7. Before parting, this Court expresses displeasure regarding



the conduct of the learned Sub-Judge IV, Begusarai, namely, Sri
M.K.Tiwari.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	4.10.2019
Transmission Date	NA

