

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.145 of 2014

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Triloki Pandit @ Tilkeshwar Pandit, Son of Late Gujay Pandit, Resident of Village & P.O. Pansalwa, P.S.-Beldaur, District-Khagaria.

... .. Petitioner/s

Versus

1. Bholchoo Pandit , Son of Late Mohan Pandit.
2. Ghooran Pandit
3. Ashok Pandit
4. Kishore Pandit, No. 2 to 4 sons of Kamleshwari Pandit, Village & P.O.-Pansalwa, P.S.-Beldaur, District-Khagaria.
5. Akkal Pandit @ Akhileshwar Pandit Son of Basant Pandit R/o Village & P.O. Pansalwa, P.S.- Beldaur, District-Khagaria.
6. State of Bihar through Collector, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rudal Prasad, Adv
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the petitioner. No one appears on behalf of the opposite parties even after filing of appearance.

2. This civil revision application is against order dated 22.07.2014 passed by Mr. Rajendra Das, learned Munsif, Khagaria in T.S.No.13 of 2014, whereby the plaint has been dismissed as not maintainable on the ground that the same dispute between the same parties was already decided in T.S.No.73 of 1996. In other words, the present suit was barred by res judicata.

3. The petitioner has challenged the correctness of the finding on the ground that the suit is not barred by res judicata. A



copy of the plaint of the present suit as well as of Title Suit No.73 of 1996 has been enclosed as Annexures-1 and 2 respectively. The plaint reveals that the sole plaintiff of T.S.No.13 of 2014, Mr. Triloki Pandit @ Tilkeshwar Pandit was defendant No.1 in T.S.No.73 of 1996. Defendant No.1 of this suit, Bholchoo Pandit, Son of Late Mohan Pandit was plaintiff of T.S.No.73 of 1996 alongwith his father Mohan Pandit, who was thus alive. Defendant second set Akkal Pandit @ Akhileshwar Pandit was defendant No.2 in the earlier suit. Defendant Nos.2 to 4 are sons of Kamleshwari Pandit and Kamleshwari Pandit was defendant No.3 in the earlier suit. Thus the parties were/are the same except the State of Bihar through Collector, Khagaria, who has been added as defendant third set in the present suit.

4. The case of the plaintiff of the present suit is that though Survey Plot No.724 under Khata No.279 in village-Dumari Pansalwa is actually 20 dhurs on the spot, however, it is wrongly recorded as 18 dhurs in the survey record of rights. The said plot is Gair Majarua Khas. A genealogical table has been attached with the plaint which would show that one Meghoo Pandit had two sons, namely, Nimchand Pandit and Thithar Pandit. The plaintiff is from the branch of Thithar Pandit and most of the defendants are from branch of Nimchand Pandit. According to the



case of the plaintiff, 10 dhurs of the aforesaid Plot No.724 from northern side was in possession of defendant 1st party and remaining 10 dhurs from the southern side was in peaceful possession of the plaintiff on which a residential house of the plaintiff is there. The description of the entire area is in Schedule-I and description of the area under possession of the plaintiff alongwith boundary is in Schedule-III of the plaint. The plaint further discloses that defendant-Bholchoo Pandit and his father had filed T.S.No.73 of 1996(earlier suit) against the plaintiff and defendant 2nd set and others for declaration of title and confirmation of possession on the same property. The plaintiff of this suit appeared in that suit and filed written statement. The judgment dated 06.05.2000 passed in T.S.No.73 of 1996 would reveal that same was the case of the plaintiff herein in the earlier suit. The plaint further discloses that T.S.No.73 of 1996 was dismissed by the learned Trial Court which was challenged in Title Appeal No.09 of 2000 which was also dismissed and then S.A. No.598 of 2010 was dismissed by the Patna High Court on 29.08.2013 vide order at Annexure-5 on the ground that no substantial question of law was made out for consideration in second appeal.



5. Contention is that even after loosing in the earlier suit, the plaintiff tried to dispossess the defendant and taking advantage of the absence of the plaintiff on 15.05.2014, they forcefully took possession of the residential house. Submission of the learned counsel for the petitioner is that since fresh cause of action has arisen, after disposal of the earlier suit, on 15.05.2014, the present suit is not barred by res judicata.

6. The judgment of the earlier suit reveals that claim of the plaintiff of that suit was defeated, for the reason that the Survey Khatian on which the plaintiff had relied, was found to be a forged and manufactured document, hence, the judgment was against the plaintiff and in favour of the defendant of the present suit.

7. Section 11 C.P.C. says that *no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.* Explanation-IV to the aforesaid section says that *any matter which might and ought to have been*



made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

8. The plaint of the present suit is clear that the nature of the suit property is Gair Majarua Govt. land. Whether the entire suit property i.e. 18 dhurs, was of the plaintiff of the earlier suit was the issue before the learned court below and the defendant, who is plaintiff in the subsequent suit, had raised in his written statement filed in the earlier suit that both sides are in possession of 10 dhurs out of 20 dhurs. Thus, it is evident that the earlier suit was between the same parties for same property and the issue involved in both the suits were directly and substantially involved in the previous suit. Only on the guise of forceful dispossession by the plaintiff, it cannot be said that subsequent suit is maintainable because the plaintiff of the subsequent suit has agitated the same claim, in other words is litigating under the same title as in the earlier suit, hence, the present suit is barred by res judicata. Moreover, the principle of constructive res judicata as stated in Explanation-IV is clearly applicable in the case. I do not find any substance in the submission of learned counsel for the petitioner that in the subsequent suit the State of Bihar has also been arrayed as party because the suit land was a public land, hence, the



subsequent suit was maintainable. This issue that the State of Bihar was a necessary party in the earlier suit was not raised by the petitioner in the earlier suit, hence, taking advantage of the misrepresentation of the parties in the earlier suit, the subsequent suit cannot be said to be maintainable.

9. The record reveals that to put a wrongful claim on the public land, both agnates are helping each other, firstly, one party of the same family brought the suit vide T.S.No.73 of 1996 and he lost at all the levels. Thereafter, the present plaintiff who was defendant in the earlier suit brought the suit putting his claim on the public land by adverse possession. However, this observation shall not prejudice, at any level of the proceeding, between the parties.

10. Accordingly, I do not find any merit in this civil revision application, and it stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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