

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.151 of 2016

In
Civil Writ Jurisdiction Case No.19494 of 2015

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Sushil Kumar Singh, S/o Late Prabhu Nath Singh, R/o village + P.S.
Dumraon, Dist. Buxar

... Defendant ... Petitioner

Versus

- 1) Dulhin Usha Kiran Devi, w/o Jayprakash
- 2) Dulhin Malti Devi, W/o Bijai Kumar
- 3) Jai Prakash Teli, S/o Gopal Teli

All r/o Station Road Dumraon, P.O. + P.S. Dumraon, Dist, Buxar

- 4) Hari Kishun Yadav
- 5) Jai Kishun Yadav
- 6) Radha Kishun Yadav
- 7) Ram Kishun Yadav, sons of late Raghunath Yadav

All R/o village, Baraka Singhanpura, P.S. Semari, Dist. Buxar

- 8) Mostt. Taramuni Devi, w/o Late Gopal Singh
- 9) Chinta Devi, W/o Jawahar Singh, R/o village, Bahuara, P.S. Natwar,
Distt. Rohtas
- 10) Motilal Singh
- 11) Kinkar Singh
- 12) Jitendra Singh, sons of Harinath singh

R/o Village + P.S. + P.O. Dumraon, Dist, Buxar

Defendant 1st setOpp. Parties 2nd set

- 13) Binod Kumar
- 14) Jai Prakash, sons of late Yadunath Ram, R/o village, Nimej, P.S.
Barhampur, Dist. Buxar

Defendant 2nd Set Opp. Parties 3rd Set

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Appearance :

For the Petitioner/s : Mr.Anirudh Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR



ORAL JUDGMENT

Date : 16-04-2019

Heard.

This civil revision petition has been filed for setting aside the order dated 07.10.2015 passed by Sub-Judge, 1st, Dumraon in Title Suit No.333/14 by which the petition dated 26.08.2015 filed by the defendants-petitioners under Order VII Rule 11 of the CPC has been rejected. Plaintiffs have filed Title Suit No.333/14 in the court of Civil Judge, Senior Division, 1st, Buxar for declaration that plaintiffs have got right, title and interest in Schedule I property which has been purchased by them from Yadunath Ram and also want of title of defendants over the same.

Suit land belongs to Yadunath Ram as same was allotted in his share in Title Suit No.135/1962, however, since he was in service, in the revisional survey Khatiyani, name of Hira, Gopal, Prabhunath, Harinath were wrongly recorded for which Yadunath Ram filed revision No.127/1993 in the court of Director, Consolidation which was decided on 23.11.1993 in favour of Yadunath Ram. Thereafter, name of Yadunath Ram stood recorded in Register II and he has been paying rent. He executed the sale deed dated 20.08.1996 in favour of plaintiffs and possession was delivered to plaintiffs.

Defendant/petitioner appeared in the suit and filed



their written statement in which it was stated that Lal Bahadur Singh and other co-sharers instituted Title Suit No.62/1996 for declaration that Schedule I property of the plaint belongs to them and the order dated 23.11.1993 passed by the Joint Director, Consolidation in Case No.127/1993 is illegal in which Yadunath Ram (vendor of the plaintiffs) was defendant second set who appeared in the suit but did not file his written statement and suit was decreed on 07.01.2014 and, as such, present sale deed executed in favour of plaintiffs by Yadunath Ram did not confer any title upon them as such present suit was not maintainable and fit to be dismissed. He filed an application under Order VII Rule 11 CPC against which a rejoinder was filed by plaintiff.

It is a well settled preposition of law that under order VII Rule 11 CPC, the plaint can be dismissed if reading of the plaint does not disclose any cause of action or suit is barred by some law. Petitioner has submitted that the suit was barred by *res judicata* and it is a settled law that *res judicata* is a mixed question of law and fact and on said basis, plaint cannot be rejected under Order VII Rule 11 of the CPC and, as such, the court below has rightly rejected the petition of the defendants-petitioners filed under Order VII Rule 11 CPC. The plaintiff and



defendant both claim their title on the basis of sale deed executed by the successors of the common ancestor Ramtahal Raut. Plaintiffs claim their title on the basis of sale deed executed by Yadu Nath Ram who was having the title and possession over the suit land and in Revisional Survey Records, it was wrongly entered in the name of other co-sharers, however, on revision filed by him, entry made in the revisional survey was corrected and his name was entered in the Revisional Survey Khatiyani. Thereafter, lands were also mutated in his name and plaintiffs are purchaser from him after obtaining permission from consolidation authorities, whereas defendants also claim their title on the basis of sale deed executed by one of the co-sharers who had challenged the order passed by the revisional authorities in which Yadu Nath Ram was also made a party but he did not contest the case and it was decided *ex parte* and the revisional order passed by the Consolidation Officers was set aside and defendants claim their title by execution of sale deed in their favour in whose favour suit was decreed.

In such a situation, the trial court has rightly held that the issue raised in the application under Order VII Rule 11 CPC cannot be decided without evidence and, as such, has rightly



dismissed the petition filed by the defendants-petitioners.

This Court does not find any error in the order passed by the trial court and, as such, order as impugned does not require any interference. However, this order will not preclude the defendant-petitioner from filing petition before the learned court below to decide the issue as raised in present petition as a preliminary issue. It is made clear that his Court has not expressed any opinion as to issue raised in this revision can be decided as preliminary issue or not and same is to be decided by learned court below on its own merit, if any such petition is filed.

The civil revision petition is disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2019
Transmission Date	NA

