

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.117 of 2015

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1. Indira Devi, wife of Bipin Prasad Singh daughter of Late Lal Babu Singh, resident of village Bhaluwan, P.S. Barharia, District - Siwan, at present village and post - Chhap Mathia, P.S. Mirganj, District - Gopalganj.
 2. Usha Devi wife of Satya Shekhar Rai daughter of Late Lal Babu Singh resident of village and P.O. Bhaluwan, P.S. Barharia, District Siwan at present village - Bharauli, P.O. Bharauli, P.S. Andar, District - Siwan.

... .. Petitioner/s

Versus

1. Lalita Singh S/o Late Kapildeo Singh At Matua Magna Bara, P.S. Barharia, District - Siwan.
2. Dhurpdeo Singh, S/o Late Kapildeo Singh R/o village Malua Magna Bara P.S. Barharia, District - Siwan.
3. Arun Kumar Singh son of Lalita Singh of village Bhaluwan, P.S. Barharia, District - Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Archana Meenakshee, Advocate
For the Respondent/s : Mr. Vijay Shankar Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 08-02-2019

Heard learned counsel for the parties.

2. Some of the defendants of Title Suit No. 279 of 2000 brought by opposite party No.1 Lalita Singh have filed this revision application against order dated 09.07.2015, whereby the learned court below refused to decide the issue of res judicata as preliminary issue under Order XIV Rule 2A of the Code of Civil Procedure.

3. Submission is that the question of res judicata was raised by the petitioners on the ground that an earlier partition suit bearing Partition Suit No. 153 of 1981, was disposed of in terms of a compromise decree between the



parties. Therefore, the same issue cannot be raised and decided in the present suit and the continuance of the present suit would amount to an abuse of the process of the Court.

The Court below recorded that the compromise decree passed in Title Suit No. 153 of 1981 has been challenged in Misc. Appeal No. 02 of 2014 and 08 of 2014 as the plaintiff stated that he had not participated in the compromise; rather the same has been forged. The Court further recorded that issue of res judicata is a mix question of fact and law. Hence, in the light of the judgment of the Hon'ble Supreme Court in **Madhukar D. Shende V. Tarabai Aba Shedage** reported in **(2002) 2 SCC 85**, the same cannot be decided as preliminary issue.

4. After hearing the parties, it does not appear that the Court below has exercised jurisdiction with illegality or material irregularity. Moreover, the said issue may be decided at the time of final adjudication of the lis.

5. Hence, this revision application stands dismissed as devoid of any merits.

(Birendra Kumar, J)

Mkr./banti/-

AFR/NAFR	NAFR
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