

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.62 of 2017

1. Bulaki Mahto
2. Dasai Mahto,
Both sons of Late Govind Mahto, Both resident of Village- Teknari, P.S.
Patepur, District- Vaishali.

... .. Petitioner/s

Versus

1. Raja Ram Sah
2. Pathalu Sah, Both sons of Yugeshwar Sah, Both resident of Village- Teknari,
P.S. Patepur, District- Vaishali.

.....plaintiff opposite parties

3. Shanti Devi, Widow of Basdeo Mahto.
4. Akli Devi, Wife of late Govind Mahto.
5. Kailash Mahto.
6. Nandan Mahto, Both sons of Late Govind Mahto, All resident of Village-
Teknari, P.S. Patepur, District- Vaishali.

... .. Defendant Opposite Parties

Appearance :

For the Petitioner/s : Mr.Naresh Chandra Verma, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 25-04-2019

Heard learned counsel for the petitioners.

2. This civil revision petition has been filed for setting aside the order dated 24.01.2017, passed by learned Munsif-II, Vaishali at Hajipur in Title Suit No. 26 of 2000, by which learned Munsif has rejected the petition dated 10.04.2014 filed by the petitioners under Section 11(VIII) of the Code of Civil Procedure for dismissing suit being barred by principles of *res judicata*.



3. Plaintiffs have filed the suit for declaration of their right, title and possession over the suit land and also for permanent injunction against defendants with respect to revisional survey Plot No. 1539 (8 decimals) and 1540 (9 decimals) measuring 13 decimals. Plaintiffs in their plaint have stated that the suit land was also subject matter of consolidation proceeding in which they had lost up to final stage and the order passed by the consolidating authority had attained finality.

4. The petition was filed on behalf of defendant-petitioners to dismiss the suit as the same was barred by principles of *res judicata*, and the order passed by the consolidating authority with respect to title and possession are final having been passed by consolidating authority who are empowered to pass orders with respect to title and possession over the suit lands which were subject matter in consolidating proceeding and same has attained finality against the said order no suit is maintainable, however, it has been rejected by the trial court by the impugned order that the consolidating authorities have no jurisdiction to decide the title and possession of the parties and same is to be decided by the Civil Court and orders passed by consolidating court are not binding upon the Civil Court. It has been further stated that similar petitions were also



filed by the petitioners which were rejected earlier and civil revision arising of the said order was also dismissed by the High Court.

5. After perusing the order passed by the trial court, this Court does not find any error, infirmity, or irregularity in the order passed by the trial court as issue of *res judicata* is mixed question of law and fact and not a pure question of law.

6. However, liberty is granted to the petitioners that the said issue shall be framed as issue by the trial court and it has to be decided in accordance with law during trial.

This disposes of the civil revision petition.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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