

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1128 of 2017

1. Raj Kishore Pandey
2. Kapildeo Pandey, Both sons of Late Jagat Narayan Pandey. All resident of Village- Pandura, P.O.- Pandura Rampur, P.S.- Sandesh, District- Bhojpur.

... .. Petitioners

Versus

1. Girija Shankar Pandey son of Late Muneshwar Pandey.
2. Arjun Pandey, son of Girija Shankar Pandey.
3. Ram Ishwar Pandey,
4. Kishna Pandey,
5. Rama Kant Pandey, Sl.No. 3 to 5 son of Late Raj Keshwar Pandey @ Nanghut Pandey.
6. Motiya Kuer, Wife of Late Raj Keshwar Pandey. All the above said 6 persons are resident of Village- Pandura, P.O.- Pandura Rampur, P.S. Anchal- Sandesh, District- Bhojpur.
7. Janardan Tiwary, son of Late Nanhku Tiwary.
8. Sidh Nath Tiwary,
9. Akshyaware Tiwary, Both sons of Janardan Tiwary. All the 3 persons are resident of Village- Baleyari, P.S.- Aarap, P.S. Anchal- Bikram, District- Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Sachchida Nand Singh, Adv.
For the Respondent/s : Mr. Pawan Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 09-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 08.05.2017 passed by the learned Sub-Judge-XII, Arrah, Bhojpur in Title Suit No. 12 of 2013 whereby he has rejected the petition dated 30.05.2016 filed by the petitioners under Section



151 of the Code of Civil Procedure for analogous hearing of Title Suit Nos. 12 of 2013 and 652 of 2012.

2. The case of the petitioners, who are plaintiffs in Title Suit No. 12 of 2013, is that the suit properties of Title Suit No. 652 of 2012 are the same as the suit properties involved in Title Suit No.12 of 2013 and parties of both the suits are also the same and further the issues of both the suits are also the same.

3. Learned counsel for the petitioners submitted that under the circumstances the court below ought to have allowed the application of the petitioners for analogous hearing of the two suits, but erroneously their prayer has been rejected.

4. On the other hand, learned counsel appearing for the respondents submitted that the petition filed by the petitioners before the trial court was not maintainable. The plaintiffs had filed Title Suit No.12 of 2013 with the sole motive to harass the defendants. Neither the suit properties nor the parties of both the suits, i.e., Title Suit No. 652 of 2012 and Title Suit No. 12 of 2013 are the same. He has further contended that a similar petition filed by the petitioners, who are defendants in Title Suit No. 652 of 2012 was already rejected by the trial court on merit. In the circumstances, an identical petition in the instant suit was also fit



to be dismissed and, accordingly, the trial court has rightly rejected the same.

5. I have heard learned counsel for the parties and perused the record.

6. The operative part of the order impugned dated 08.05.2017 reads as under :-

“I have heard the submissions and gone through both the Title Suits. It transpires that the defendants of this suit have filed T.S. No. 652/12 for passing a decree of partition by metes and bounds with regard to the schedule 1 property in plot no. 90 of Mauza Padura, Thana Sandesh, District Bhojpur. It further transpires that the plaintiffs of the present suit, Title Suit 12/2013, have filed this suit for passing a decree of partition by metes and bounds with regard to the property mentioned in the schedule A and B of the plaint which also includes the land in plot no. 90, however, parties of both the suits are not same and the suit property of both the suits are also not entirely the same. For analogous proceedings convenience of the parties in the conduct of litigation is a relevant consideration, but here one side of the suit is not in favour of analogous proceeding, means at least one side of the suit believes that analogous proceeding is not convenient for that side. Further since once this court has already rejected the same prayer on the merit giving finding that by allowing analogous proceeding only the ambiguity and confusion with



regard to the dispute in the suit will enhanced, this court does not find any merit in the instant petition. However both the suit will be put up for further proceedings on the same date so it will be convenient for both the sides to conduct the same.

Considering the above discussion, facts and circumstances of the suits the petition dated 30/05/2016 filed on behalf of the plaintiffs stand rejected.”

7. Considering the facts and circumstances of the case, I am of the opinion that the reasons assigned by the trial court while passing the impugned order dated 08.05.2017 whereby the application filed by the petitioners for analogous hearing of the two suits was rejected are neither without jurisdiction nor perverse. The trial court has rightly recorded that as the court has already rejected the same prayer on merits, by allowing analogous proceeding only the ambiguity and confusion with regard to the dispute in the suit would be enhanced. The trial court was left with no option but to reject the prayer of the petitioners. As a matter of fact, the trial court has taken into consideration the pleadings of the petitioner and has directed that both the suits will be put up before the court on the same date so that it will be convenient for both the sides to conduct the same.



8. Hence, in the absence of any illegality or perversity in the order impugned, I am not inclined to interfere with the same in supervisory jurisdiction under Article 227 of the Constitution of India. The application is dismissed.

9. However, the learned Sub-Judge-XII, Ara, Bhojpur is directed to dispose of both the suits expeditiously without giving any unnecessary adjournment on any ground to either of the parties.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.08.2019
Transmission Date	

