

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.280 of 2017

In

First Appeal No.05 of 2016

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Om Prakash Singh & Anr

... .. Petitioner/s

Versus

Mostt. Sumitra Devi & Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uma Kant Tiwary

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date : 09-01-2019

1. Heard learned counsel for the applicants and perused the record.
2. This review petition has been preferred in respect of order dated 11.7.2017 passed by this court in FA no. 05/2016.
3. It is relevant to mention certain facts. This court vide order dated 17.4.2017 directed the parties of FA no. 05/2016 to maintain status quo in respect of disputed land. However, on 11.7.2017, one Jitendra Kumar filed two interlocutory applications i.e. bearing IA no. 4748/2017 and IA no. 4749/2017. This court vide order dated 11.7.2017 directed that IA no. 4748/2017 and IA no. 4749/2017 as well as IA no. 2154/2016 be listed under the heading for orders on petition. Furthermore, while passing order dated 11.7.2017 this court made clarification that the order dated 17.4.2017 had been passed



only in respect of disputed plot no. 84 and not in respect of plot no. 82 as plot no. 82 was not in dispute.

4. Learned counsel appearing for the applicants submits that this court committed error while observing in order dated 11.7.2017 that plot no. 82 was not in dispute in Title suit no. 172/1992 corresponding to FA no. 05/2016. Continuing his submission, learned counsel appearing for the applicants submits that no doubt, plaintiffs of Title suit no. 172/1992 sought relief in respect of plot no.82 but the contesting defendants based their right and title on plot nos. 82 and 84 and it is well settled principle of law that the suit is decided on the basis of pleadings of the parties and, therefore, this court while passing order dated 11.7.2017 over-looked the pleadings of the defendants of Title suit no. 172/1992 and erroneously held that plot no.82 was not in dispute in Title suit no. 172/1992 and accordingly, he seeks modification of order dated 11.7.2017.
5. Learned counsel for the applicants, further, submits that the order dated 11.7.2017 was passed on the prayer of one Jitendra Kumar who was stranger to the suit as well as appeal and it is settled principle of law that no order can be passed on the prayer of the stranger to the suit or appeal.
6. Perusal of record goes to show that the plaintiffs-respondent Ist party filed Title suit no. 172/1992 seeking declaration of their right, title



and injunction in respect of plot no. 84 situated at Jalalpur P.S. Danapur District Patna. The aforesaid suit was decreed vide judgment and decree dated 11.12.2015 against which defendant nos. 22 and 23-appellants (applicants) filed FA no. 05/2016. During the pendency of the aforesaid FA no. 05/2016, applicants filed IA no. 2154/2016 praying therein for stay of judgment and decree passed in Title suit no. 172/1992. On filing of the aforesaid IA no. 2154/2016, this court granted one week's time to other side to file counter affidavit and while granting one week's time to other side, this court directed the parties of FA no. 05/2016 to maintain status quo in respect of disputed land vide order dated 17.4.2017. However, on 11.7.2017 one Jitender Kumar appeared and filed IA no. 4748/2017 and IA no. 4749/2017 and it was brought to the notice of this court that in IA no. 2154/2016, plot no. 82 was shown as disputed plot in Title suit no. 172/1992 though in the aforesaid Title suit no. 172/1992, plot no. 84 was only in dispute. However, this court adjourned the hearing of IA no. 4748/2017, IA no. 4749/2017 as well as IA no. 2154/2016 making it clear that the order dated 17.4.2017 had been passed only in respect to plot no. 84 which was in dispute in Title suit no. 172/1992.

7. So far as submission advanced on behalf of the applicants that suit is decided on the basis of pleadings of the parties is concerned, I am not



in agreement with his submission because the suit is always confined to the reliefs sought for by the plaintiff and so far as pleadings of the parties are concerned, same are only important for deciding the case of the parties. I am also not in agreement with the submission of learned counsel of the applicants that the order dated 11.7.2017 had been passed on the prayer of the stranger because interlocutory applications of the said Jitendra Kumar had been kept pending for disposal and no order was passed on the interlocutory applications of the aforesaid Jitendra Kumar as well as interlocutory application of the applicants and vide order dated 11.7.2017 only the order dated 17.4.2017 was clarified. Therefore, in my view, this review petition does not have any merit and is liable to be dismissed on admission stage. Accordingly, this review petition is dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.1.2019
Transmission Date	NA

