

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1586 of 2019**

- =====
1. Vijay Rai @ Vijay Singh Son of late Kripa Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
  2. Abhay Singh@ Abhay Rai, Son of late Prasuram Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.

... .. Defendants/Petitioners

Versus

1. Birendra Rai Son of late Kamla Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
2. Sunaina Devi, Daughter of late Kamla Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
3. Bablu Singh, Son of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
4. Dablu Singh, Son of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
5. Santosh Singh, Son of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
6. Sima Devi, Daughter of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
7. Dimpal Devi, Daughter of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
8. Nitu Devi, Daughter of Birendra Singh, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
9. Nagendra Rai, Son of late Raj Krit Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.

..... Plaintiffs/Respondents (1<sup>st</sup> Set)

10. Mina Devi, Daughter of late Kripa Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
11. Asha Devi, Daughter of late kripa Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
12. Bebi Devi, Daughter of late kripa Devi, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
13. Satendra Rai, Son of alte Prasuram Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
14. Abhay Rai, Son of late Prasuram Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
15. Usha Devi, Daughter of late Prasuram Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.



16. Ritu Devi, Daughter of late Prasuram Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.

.... Defendants/Respondents (2<sup>nd</sup> Sets)

17. Ashok Rai, Son of late Sudarshan Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
18. Brijesh Rai, Son of late Sudarshan Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
19. Binod Rai, Son of late Sudarshan Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
20. Shobha Devi, Daughter of late Sudarshan Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
21. Musmat Ganesha Kuwar Wife of late Sudarshan Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
22. Grin Kishore Rai, Son of late Bharat Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
23. Gauri Shankar Rai, Son of Jamadar Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
24. Lachuman Rai, Son of Jamadar Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
25. Dashrath Rai, Son of Jamadar Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
26. Chunchun Devi, Daughter of Jamadar Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
27. Meera Devi, Daughter of Jamadar Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
28. Pradeep Devi Son of late Harmun Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
29. Tuntun Rai, Son of late Harmun Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
30. Geeta Devi, Daughter of late Harmun Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
31. Mala Devi Daughter of late Harmun Rai, Resident of Village Mauza Masan Thana, P.O. Jadopur Dukhharan, P.S. Jadopur, District- Gopalganj.
32. Manjur Ali, Son of late Jumaid Hussain, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
33. Sagir Alam, Son of late Kamamul Hussain, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
34. Anarul Hussain, Son of late Jumaid Hussain, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
35. Bibi Khaurul Nesha, Wife of Manjur Ali, Resident of Village Sareya Ward



No. 2, P.S. Gopalganj, District- Gopalganj.

36. Munilal Ram, Son of late Shiv Prasad Ram, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
37. Mohamad Salim, Son of Thag Mian, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
38. Mahesh Choudhary, Son of Bashdeo Chaudhary, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
39. Sudama Sah, Son of Mani Sagar Sah, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
40. Kanhaiya Choudhary, Son of Banshi Choudhary, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
41. Mehadi Hasan, Son of Kayamat Hussain, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
42. Kolai Choudhary, Son of Ram Dayal Choudhary, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
43. Jhagru Choudhary, Son of Inar Choudhary, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
44. Ramayan Ram, Son of late Swarup Ram, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
45. Kadam Sonar, Son of late Swarup Ram, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
46. Md. Shamim Son of Mansur Mian, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
47. Harinand Sah, Son of late Sudarshan Sah, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
48. Yunush Mian, Son of Fagu Mian, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
49. Yogendra Choudhary, Son of late Hira Choudhary, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
50. Laldeo Ram, Son of Shiv Pujan Ram, Resident of Village Sareya Ward No. 2, P.S. Gopalganj, District- Gopalganj.
51. Shamim Ahmad, Son of Mansur Ali, Resident of Village Bhitbherwa, P.S. Gopalganj, District- Gopalganj.
52. Kayamuddin Ahmad, Son of Tajmul Hussain Resident of Village Bhitbherwa, P.S. Gopalganj, District- Gopalganj.

... Defendants/Respondents (3<sup>rd</sup> Sets)

... Respondent/s

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**Appearance :**

For the Petitioners/s : Mr. Naresh Prasad, Advocate.

For the Respondent/s: Mr.

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**Date : 02-12-2019**

The present writ petition has been filed *“for quashing of the order dated 17.07.2019 passed in Title Suit No. 149 of 2012 by learned Sub-Judge-IX, Gopalganj, whereunder and whereby the petition dated 09.02.2018 filed by the Defendant No. 1 under Section 11 of the Code of Civil Procedure has been rejected.”*

2. Learned counsel for the Defendants/Petitioners submits that Title Suit No. 268 of 1991 had earlier been filed relating to the suit land at the instance of Bunnilal Ram, who had purchased the suit land from the plaintiffs/respondents (1<sup>st</sup> Set) of the present case. The suit was dismissed on 20.06.1996, *inter alia*, holding that the sale deed executed in favour of the purchaser Bunnilal Ram by the present plaintiffs was not valid as the land had been transferred without title. It is therefore submitted that in view of the sale of the suit land by the plaintiffs/respondents (1<sup>st</sup> Set) having already been held to be without title, the matter was set at rest in Title Suit No. 268 of 1991 and the present suit was barred by the doctrine of *res judicata*. A petition under Section 11 of the Code of Civil Procedure was accordingly filed by Vijay Rai defendant no. 1/petitioner no. 1, for dismissing the suit on such grounds.

3. Heard learned counsel for the Defendants/Petitioners and perused the material on record. Neither the plaint of Title Suit



No. 268 of 1991 nor the plaint of the present suit, nor even the judgment dated 20.06.1996 dismissing the aforesaid title suit, have been enclosed with the present petition. It is however not in dispute that Title Suit No. 268 of 1991 had been filed by Bunnilal Ram unlike the present suit which has been filed by the plaintiffs/respondents (1<sup>st</sup> Set). The impugned order dated 17.07.2019 specifically states that the two suits are between different parties and the subject matter is also distinct. Learned counsel for the Defendants/Petitioners has not been able to demonstrate otherwise.

4. In this view of the matter, therefore, this Court is of the view that the ingredients of Section 11 of the Code of Civil Procedure are not satisfied. The petition is devoid of merit and stands dismissed.

**(Vikash Jain, J)**

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | N.A.       |
| <b>Uploading Date</b>    | 03.12.2019 |
| <b>Transmission Date</b> | N.A.       |

