

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1685 of 2018

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Ram Sagar Ray, Son of Rampat Ray, Resident of Village-Pyarepur, P.S.-
Patori, District-Samastipur.

... .. Defendant/ Petitioner

Versus

1. Mosomat Pinki Devi, Wife of Late Gopal Thakur, Resident of Village-Lagunia, P.S. Patori District Samastipur.
2. Doli Devi, Wife of Manoj Kumar Daughter of Late Gopal Thakur, Resident of Village-Raghnathpur P.S.-Mushari, District-Muzaffarpur.
3. Binita Kumari, 3 and 4 are Minor Daughter
4. Komal Kumari, D/o Gopal Thakur Gardian of Pinki Devi Resident of Village-Lagunia, P.S. Patori District Samastipur
5. Kabita Devi, Wife of Ranjit Thakur D/o Late Gopal Thakur, Resident of Village-Nandani P.S.-Mohddinagar, District-Samastipur.

... .. Plaintiffs/ Respondents

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Appearance :

For the Petitioner	:	Mr. Anil Kumar Choudhary-Advocate
For the Respondents	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

27-09-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 23.07.2018 passed in Title Suit No.373 of 2014 by the learned Civil Judge No.1, Shahpur Patori, (Samastipur) whereby he has dismissed the petition filed by the petitioner under Order-7, Rule-11 of the Code of Civil Procedure (for short 'C.P.C.').

3. Learned counsel appearing for the petitioner submitted that the trial Court has rejected the application filed



on behalf of petitioner without appreciating the fact that the suit filed by the plaintiffs was under valued.

4. On perusal of the order impugned, I find that the petitioner, who is the plaintiff in the Court below had filed an application under Order-7, Rule-11 of the C.P.C. on 11.09.2017 for rejection of the plaint on the following grounds that the same was barred by law of limitation:-

A) It is barred by law of limitation.

B) The plaintiff has not given the actual valuation of the property which is around of worth Rs.20 Lakhs.

C) The plaintiff was not legally wedded wife of Late Gopal Thakur, so she has no capacity to bring this suit.

5. The plaintiffs-respondents filed their rejoinder contesting the application filed on behalf of the petitioner on all grounds.

6. The trial Court, after hearing the submissions made on behalf of the parties, in its order dated 23.07.2018 held that the defendant-petitioner did not raise the issue at the earliest possible stage of the suit, which was filed in the Year 2014. He had joined the suit by completing his appearance on 24.06.2015 and filed his written statement on 11.09.2015.

7. The trial Court has further observed in its



impugned order that nine issues have already been framed on 24.11.2015 for determination out of which issue no.2 is whether the suit is barred by law of limitation. The case has proceeded for evidence on behalf of the plaintiffs. At this juncture, after a long gap of commencement of trial on 11.09.2017, the petitioner has filed the application for rejection of the plaint.

8. After recording the aforesaid grounds, the trial Court while passing the order impugned framed two new issues as under:-

A) Whether the Court fee paid is insufficient ?

B) Whether Mosomat Pinki Devi is a legally wedded wife of Late Gopal Thakur or not ?

9. The aforesaid two new issues were added in the list of issues taking into consideration the anxiety of the defendants.

10. Having framed two more issues, the trial Court vide impugned order dismissed the application filed by the petitioner as not maintainable.

11. In the opinion of this Court, the order impugned does not require any interference in the supervisory jurisdiction by this Court.

12. The issues raised by the petitioner for



rejection of plaint are mixed questions of law and fact.

13. Though the stage at which the application was filed, may not be relevant, since the grounds taken are mixed questions of law and fact, in order to determine the issues raised by the petitioner, a full-fledged trial would be required.

14. In that view of the matter, the trial Court has rightly rejected the application filed by the petitioner.

15. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.09.2019
Transmission Date	30.09.2019

