

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.445 of 2018

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Dropati Devi W/o Shyam Nandan Singh, Resident of Village- Berar, P.S.-
Rani Talab, District- Patna.

... .. Petitioner/s

Versus

1. Jaswanti Devi, W/o Late Jitendra Singh,
2. Shailesh Sharma,
3. Pankaj Kumar, Both sons of Late Jitendra Singh, All resident of Village-
Berar, P.S.- Rani Talab, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 17-08-2022 Heard learned Counsel for the petitioner.

The petitioner is the defendant before the learned
Court below in Title Suit No. 04 of 2006, filed by the
respondents-plaintiffs.

The petitioner has challenged the order, dated
16.09.2017, passed, in Title Suit No. 04 of 2006, by learned Sub
Judge, Paliganj, Patna, by which the learned Court below has
rejected the petition filed by the petitioner-defendant, under
Section 11 of the C.P.C.

Learned Counsel for the petitioner-defendant submits
that the suit is barred by res judicata inasmuch as the
respondents-plaintiffs had filed a suit for the same relief and on
the same fact, bearing Title Suit No. 18 of 2003, before the



Court of learned Munsif, Danapur, which was dismissed by the said Court.

Learned Counsel placed reliance upon Section 11 of the C.P.C., which is quoted here below:-

“11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of



defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

I have heard learned Counsel for the petitioner and



have gone through the materials available on record, including the impugned order. From perusal of the same, it appears that the learned Trial Court, while rejecting the petition filed by the petitioner-defendant, has taken into consideration that earlier suit filed by the respondents-plaintiffs, bearing Title Suit No. 18 of 2003, was dismissed due to non-compliance of the order for filing the court fee and the suit was not decided on merit.

Having regard to the fact that no issue was decided in the previous suit filed by the respondents-plaintiffs and the suit was dismissed due to non-compliance of the order of the Court for filing court fee, I am in agreement with the finding of the learned Court below that Section 11 of the C.P.C. is not applicable in the facts of the case.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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