

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.410 of 2022

1. Janki Devi, Wife of Asharfi Ram, daughter of Poshan Chamar, resident of Mohalla-Magardahi, Ward No. 15 (old) Under Town, P.S. Nagar, District Samastipur.
2. Rukmini Devi, Wife of Ram Chandra Ram, daughter of Poshan Chamar, resident of Mohalla-Magardahi, Ward No. 15 (old) Under Town, P.S. Nagar, District Samastipur.

... .. Petitioner/s

Versus

1. Laxmi Shankar Prasad @ Gopal Prasad, son of Late Satya Narayan Prasad, resident of Mohalla-Gola Road, Ward No. 18 (New) Under Town Samastipur, P.O., P.S. and Distt. Samastipur.
2. Tiyaagi Prasad @ Chhotu, son of Late Satya Narayan Prasad, resident of Mohalla-Gola Road, Ward No. 18 (New) Under Town Samastipur, P.O., P.S. and Distt. Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Niraj Lochan Jha
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 03-11-2022 Heard learned Counsel for the petitioners.

The petitioners have filed this application being aggrieved by the order, dated 10.03.2022 and 30.11.2021, passed by learned Additional District Judge-X, Samastipur, in Title Appeal No. 20 of 2011.

At the very outset, learned Counsel for the petitioners confined his prayer to the challenge of order, dated 30.11.2021, passed by learned Additional District Judge-X, Samastipur, in Title Appeal No. 20 of 2011.

By the impugned order, the learned lower appellate



court has rejected the prayer of the petitioners-plaintiffs for recast of the issue at the appellate stage.

Learned Counsel for the petitioners submits that a petition was filed by the petitioners-plaintiffs, on 30.09.2021, before the lower appellate court, in Title Appeal No. 20 of 2011, for recast of the issues, praying therein to frame the following issues:-

“1. Whether during the lifetime of Renu Chamar, his son Posan Chamar was legally entitled to execute the land in favour of Dhannu Sah?

2. Whether sale deed, dated 28.08.1934, which is executed by Chaturbhuj Sah in favour of Satyanarain Sah, which is legally valid?

3. Whether Chaturbhuj Sah has any legal right to make guardian of Jagdish Prasad Sah and others?”

The said prayer has been made by the petitioners on the basis of the fact that in the judgment passed in Title Suit No. 248 of 2005, against which Title Appeal No. 20 of 2011 was preferred, the learned Trial Court did not make it clear as to how the defendants-respondents had title over the suit property. The defendants-respondents purchased the suit property from a stranger, who had no concern with the said land inasmuch as Posan Chamar had no right or title to execute the sale deed in



favour of the defendants-respondents., He further submits that the petitioners are old ladies and are illiterate and as such, at the initial stage, some important facts could not be brought in Title Suit No. 248 of 2005, as such, a petition has been filed for framing further issues for adjudication, as stated herein above as well as a petition for amendment of the plaint, which were rejected.

I have heard learned Counsel for the petitioners and have perused the materials available on record, including the impugned order, dated 30.11.2021.

It appears that the relief sought in the suit filed by the petitioners against which Title Appeal No. 20 of 2011 has been preferred by them, was only with regard to declaration of title, permanent injunction restraining the defendants from interfering in the property described in Schedule-I of the plaint, but no relief was sought by the plaintiffs-petitioner for cancellation of sale deeds, dated 28.08.1934 and 09.04.1919.

Order XIV Rule 1 of the Code of Civil Procedure speaks that issues in a suit arise when a material proposition of fact or law is affirmed by the one party and denied by the other, material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a



defendant must allege in order to constitute his defence, and each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

In Title Suit No. 248 of 2005, the appellants-plaintiffs-petitioners sought no relief for cancellation of sale deeds, dated 28.08.1934 and 09.04.1919, as such, no issue was framed by the learned Trial Court on the said points. The learned Trial Court found the title of the defendants-respondents over the suit property on the basis of the above mentioned two sale deeds, as brought on record by the defendants-respondents in their written statement, stating therein that disputed plot no. 12 belong to Posan Chamar, who sold the same to Dhannu Sah, son of Late Bhatu Sah, by virtue of sale deed, dated 09.04.1919 and thereafter the aforesaid purchaser came in possession over the same and said Dhannu Sah sold the said land of plot no. 12 along with other land to Satyanarain Prasad, the father of the defendants-respondents, by virtue of sale deed, dated 28.08.1934.

Order 41 Rule 25 of the Code of Civil Procedure prescribed that where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court



essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence, if required.

From perusal of the materials on record, it transpired that the learned Trial Court has not omitted to frame or try any issue, which was essential to the right decision and on the contrary, it transpires that on the basis of the case put forth by the defendants-respondents, in their written statement, regarding their right over the disputed land on the basis of sale deeds, dated 28.08.1934 and 09.04.1919. the learned Trial Court found the title of the defendants-respondents over the suit property and, now, the petitioners-plaintiffs sought to recast the issues as to whether the sale deeds, dated 28.08.1934 and 09.04.1919 are valid or not, which, in my opinion, cannot be framed at the appellate stage, particularly when the learned Trial Court has given its finding upon the aforesaid sale deeds in favour of the defendants-respondents, in the judgment, dated 16.04.2011.

The learned lower appellate court has also taken note of the conduct of the appellants-petitioners that the present petition for recast of the issues has been filed in order to linger



the disposal of the appeal.

In view of the aforesaid discussion and the findings arrived at by the learned lower appellate court, I am of the considered opinion that no interference with the impugned order is warranted by this Court.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

U	√		
---	---	--	--

