

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.475 of 2022

1. Sanmatia Devi @ Sonapati Devi wife of Ramchandra Pandit D/o Late Khedu Pandit, resident of Village - Khairva, P.O. - Bela Chamhi, P.S. - Chhaura Dano, District - East Champaran.
2. Bhola Pandit S/o Late Sahdeo Pandit resident of Village - Khairva Dargah, P.O. - Bela Chamhi, P.S. - Chhaura Dano, District - East Champaran.

... .. Petitioner/s

Versus

1. Bedami Devi wife of Rameshwar Pandit, D/o Shivrath Pandit, resident of Village- Basmanpur, P.S. and P.O. - Town Muffasil Motihari, District - East Champaran.
2. Most. Panbatia Devi wife of Late Sahdeo Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhaura Dano, District - East Champaran.
3. Baldeo Pandit S/o Late Khedu Pandit, Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhaura Dano, District - East Champaran.
4. Lal Prasad Pandit Son of Late Musahar Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhouradano, District - East Champaran.
5. Laxuman Pandit Son of Late Musahar Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhouradano, District - East Champaran.
6. Madan Pandit Son of Late Musahar Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhouradano, District - East Champaran.
7. Methur Pandit Son of Late Musahar Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhouradano, District - East Champaran.
8. Bhagirath Pandit Son of Late Musahar Pandit Resident of Village - Kodarkat, P.O. - Kodarkat, P.S. Chhouradano, District - East Champaran.
9. Laxmaniya Devi W/o Nagendra Pandit D/o Musahar Pandit, Resident of Village and P.O. - Shekhauna, P.S. - Ghorasahan, District - East Champaran.
10. Shivrath Pandit S/o Late Ramkishun Pandit Resident of Village and P.O. - Kodarkat, P.S. and P.O. - Chhauradano, District - East Champaran.
11. Rambalak Pandit Son of late Ramkishun Pandit Resident of Village and P.O. - Kodarkat, P.S. and P.O. - Chhauradano, District - East Champaran.
12. Ramesh Pandit Son of Late Ramkishun Pandit Resident of Village and P.O. - Kodarkat, P.S. and P.O. - Chhauradano, District - East Champaran.
13. Ram Bahadur Pandit Son of Bhagrasan Pandit Resident of Village - Fulwar Gamhariya, P.S. and P.O. - Banjariya, District - East Champaran.
14. Lal Bahadur Pandit Son of Bhagrasan Pandit Resident of Village - Fulwar Gamhariya, P.S. and P.O. - Banjariya, District - East Champaran.
15. Sukati Devi wife of Jodhan Pandit D/o Jaymalia Devi Resident of Village - Khairva Dargah, P.O. - Bela Chamhi, P.S. - Chhaura Dano, District - East Champaran.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Kundan Rathore@ Kundan Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 09-11-2022 The petitioner is aggrieved by the impugned order dated 04.04.2022 passed in Partition Suit No. 330 of 2019 by which the application filed by the petitioner under Order 14 Rule 2 of the C.P.C. for framing preliminary issue on the point of *res judicata* has been rejected.

Learned counsel for the petitioner submits that the suit is barred by the principle of *res judicata*, but the learned trial court without framing preliminary issue and deciding this question, has rejected the prayer of the petitioner by the impugned order for framing preliminary issue.

I have heard learned counsel for the petitioner and gone through the impugned order. It appears that the learned trial court after taking into consideration the materials on record has recorded that the defendants have taken objection in their written statement that a similar suit was adjudicated by a competent court filed by the father of the plaintiff. Order 14 Rule 2 of the C.P.C. prescribes that a court can settle preliminary issue only with respect to dispute which involves pure question of law i.e. of the jurisdiction of the court and the



bar to the suit created by any law for the time being in force.

The issue of *res judicata* is a mixed question of fact and law, which can not be decided by way of preliminary issue. The question of *res judicata* can be decided with other issues framed in the suit during the course of trial.

I do not find any infirmity in the impugned order. Accordingly, this application is dismissed.

(Anil Kumar Sinha, J)

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