

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.547 of 2017

1. Smt. Sheela Devi, aged about 62 years, wife of Shobha Sant Nishakar, resident of Village- Sadipur, P.S.- Khanpur, District- Samastipur, at present residing in Village- Darhar, P.S.- Bhadurpur, P.O.- Laheriasarai, District- Darbhanga.
2. Smt. Kumari Pooja, aged about 32 years, wife of Sachindra Mohan Jha, resident of Village- Govindpur, P.O. Laheriasarai, District- Darbhanga.
3. Smt. Archana Singh, aged about 37 years, wife of Santosh Kumar Singh, resident of Mohalla- Rai Shaheb, Pokhra, Near Ram Janki Mandir, P.O.- Laheriasarai, P.S.- Bahadurpur, District- Darbhanga.
4. Babita Kumari, aged about 40 years, wife of Rakesh Kumar Singh, resident of Mohalla- R.S. Tank near Ram Janki Mandir, P.O.- Laheriasarai, P.S.- Bahadurpur, District- Darbhanga.

... .. Petitioner/s

Versus

Binod Narain Jha, aged about 75 years, son of Late Awadh Narayan Jha, resident of Village- Raje South Tola, P.O.- Manigachi, P.S.- Manigachi, District- Darbhanga, at present residing Mohalla- Ayachi Nagar, Near- Btatba Pokhar, P.O.- DMCH Laheriasarai, P.S.- Benta, Laheriasarai- 846003, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kalyan Shankar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

10 07-08-2023 Heard learned counsel for the petitioners.

2. This Civil Miscellaneous Application has been filed against the order dated 28.01.2017 passed by learned Sub-Judge, IV, Darbhanga, in Title Suit No. 533 of 2014 whereby and whereunder the learned Court below has rejected a petition under Order XIV Rule 2(b) of the Code of Civil Procedure filed by the petitioners.

3. The brief facts of the case are that the plaintiff has



filed the suit for declaration of title over the suit land, for vacating the suit land after removing the constructed structure and also for declaring the sale deeds dated 24.03.2014 executed by defendant no. 2 in favour of defendant nos. 1, 3 and 4 as null, void, inoperative and not binding on the plaintiff besides others relief. The defendants appeared in the suit and contested the suit. Issues were framed on 21.03.2016 and the record was fixed for evidence on behalf of the plaintiff. The petitioner/ defendant No. 1, filed a petition praying to decide the issue whether the suit is barred by law of limitation as a preliminary issue and the learned Court below after hearing the parties rejected the said prayer of the petitioners by the impugned order.

4. Learned counsel for the petitioners submits that the suit is barred by limitation. The trial Court ought to have decided the issue of limitation as preliminary issue. He further submits that after dismissal of Mutation Revision Case Nos. 77 of 2001-02 and 78 of 2001-02 by Court of learned Collector, Darbhanga vide order dated 02.07.2005, no further legal step was taken by the plaintiff against the said order before the institution of the present suit and after lapse of 10 years or more of the said order in Mutation case, he has filed the present suit. Accordingly, the present suit is hopelessly barred by law of



limitation which can be dismissed by deciding the issue whether suit is barred by limitation as preliminary issue.

5. Having heard learned counsel for the petitioners and on perusal of the impugned order, it appears that the learned Court below after hearing the parties and considering the materials on record observed that it is not proper to decide the suit by framing preliminary issue under Order XIV Rule 2(b) CPC at the said stage of the case as limitation is a mixed question of law and facts. Accordingly, rejected the said petition of the petitioners.

6. As per Order 14 Rule 1, issue arises when a material proposition of fact or law is affirmed by one party and denied by the other party. The issues are framed on the material proposition, denied by another party. These are issues of facts and issues of law. In case, question of limitation can be decided on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation can not be made under Order 14 Rule 2(2) as a preliminary issue. In the present case facts are not admitted.

7. In view of the facts and circumstances of the case and the legal provision as stated above, this Court does not find



any jurisdictional error or illegality in the impugned order for interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution.

8. This Civil Miscellaneous application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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