

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.32 of 2014

Nityanand Mandal Son Of Anup Lal Mandal, Resident Of Village Telia Bathan, P.S. Pasraha Parbatta , District Khagaria

... .. Petitioner

Versus

1. Surmi Devi Wife Of Late Suresh Das, Resident Of Village Telia Bathan, P.S. Pasraha (Parbatta), District Khagaria.
- 2.1. Mithilesh Das Son of Late Feku Das, R/o Village - Kolwara, P.S. - Maraiya (Parbatta), Distt. - Khagaria.
- 2.2. Ravindra Das, Son of Late Feku Das, R/o Village - Kolwara, P.S. - Maraiya (Parbatta), Distt. - Khagaria.
3. Manoj Mandal
4. Pradeep Mandal Both Sons Of Late Shiv Prasad Mandal, Residents Of Village Gidha, P.S. Rupouli, District Purnea
- 5.1. Jiwan Kumar Son of Late Murlidhar Mandal, R/o village - Telia Bathan, P.S. - Maraiya (Parbatta), Dist. - Khagaria.
- 5.2. Aman Kumar, Son of Late Murlidhar Mandal, R/o village - Telia Bathan, P.S. - Maraiya (Parbatta), Dist. - Khagaria.
- 5.3. Tanuja Kumari, D/o Late Murlidhar Mandal, R/o village - Telia Bathan, P.S. - Maraiya (Parbatta), Dist. - Khagaria.
- 5.4. Monika Kumari, D/o Late Murlidhar Mandal, R/o village - Telia Bathan, P.S. - Maraiya (Parbatta), Dist. - Khagaria.
6. Bedanand Mandal Son Of Yogendra Mandal
- 7.1. Shiv Kumar Son of Late Rajdeo Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 7.2. Nilu Kumari, D/o Late Rajdeo Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 7.3. Minu Kumari, D/o Late Rajdeo Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.1. Jai Jairam Sharma Son of Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.2. Manohar Sharma, Son of Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.3. Shambhu Sharma, Son of Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.4. Nanda Devi D/o Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.5. Veena Devi D/o Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
- 8.6. Sangita Devi, D/o Late Ajabi Sharma, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.



9. Phulo Mandal Son Of Anupla Mandal
10. Balmukund Mandal Son Of Late Janardan Mandal All Residents Of Village Telia Bathan, P.S. Pasraha Parbatta , District Khagaria
11. Shailesh Bhagat Son of Late Prakash Bhagat, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
11. Mithilesh Bhagat, Son of Late Prakash Bhagat, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
11. Shithlesh Bhagat, Son of Late Prakash Bhagat, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
11. Ram Bahadur Bhagat, Son of Late Prakash Bhagat, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
11. Poonam Devi, D/o Late Prakash Bhagat, R/o Village - Telia Bathan, P.S. Pasraha (Parbatta) District - Khagaria.
12. Ram Babadu Bhagat Son Of Prakash Bhagat Both Residents Of Village Telia Bathan, P.S. Pasraha Parbatta , District Khagaria

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Vindhy Keshari Singh, Sr. Advocate
For the Respondent/s	:	Mr. Anshu Dhar Sharma, Advocate
	:	Mr. Mukesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

23 10-02-2023 This Civil Revision Application is filed against the order dated 29.11.2013 passed by learned Sub Judge-II, Khagaria in Title Suit No. 56 of 2005, whereby the application filed under Order 14, Rule 2 of the Civil Procedure Code has been disposed of and held that the said issue would be dealt with other issues after framing of issues.

However, learned counsel for the petitioner further submits that in view of Section 43(2) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 which clearly expresses that no Order of Revenue Board or Appellate Authority under Bihar Land Reforms (Fixation of



Ceiling Area and Acquisition of Surplus Land) Act, 1961 shall be questioned in any court. Further, it is submitted that there was a land Ceiling Case No. 122/73-74 initiated against Shiv Prasad Mandal in which, the surplus was taken out under *Khata* No. 64, 13, plot nos. 1207 and 1253 respectively for the grant of 78.5 decimals and 96.5 decimals respectively and declared as surplus land and the same was acquired by the State Government. The plaintiffs were *parcha*-holder of the land. It is further alleged that the defendants did not prefer an appeal against the order passed in Ceiling Case No. 122/73-74 *vide*, Parcha Case No. 2/92-93, *Parcha* was granted in favour of Suresh Das. It is also stated that the *Parchas* were issued in favour of plaintiffs out of surplus land of Ceiling Case No. 122/73-74. Learned counsel for the petitioner further submits that the defendants filed a case under Section 45(B) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 bearing Revenue Miscellaneous Case No. 1/95-96 before the Revenue Minister, State of Bihar against the acquisition of Land measuring 1.75 Acres and after hearing, the Hon'ble Minister passed an order whereby 1.75 Acres of land has been excluded from the Ceiling surplus land, which has been shown in Annexure 'I'. Accordingly, Gazette notification no. 106 dated 09.12.1997 was published and proposal was made



for cancellation of purcha of the said land which was distributed on 23.05.1992 to the plaintiffs. In view of the Gazette notification a case bearing Ceiling Case No. 01 of 2000-01 was initiated by the circle officer, Parbata, Khagaria which finally culminated in cancellation of Jamabandi No. 1539 and 1540 in favour of the husband of plaintiff no. 1 and plaintiff no. 2 by the Additional Collector, Khagaria on 11.11.2004. It is further submitted by the learned counsel for the petitioner that after appearance of the defendant-petitioner in the instant suit, they filed their written statement and have very categorically and specifically stated in their written statement that the suit is barred under Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. It is stated that the *Parchas* were issued in favour of the plaintiffs, which have been cancelled. Hence, the plaintiff have no right title and interest over the suit property and this suit is not admissible / maintainable by Civil Court in the light of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 and accordingly, a petition was filed under Order 14 Rule 2(2) of the Code of Civil Procedure for framing preliminary issue to decide the question of jurisdiction as the preliminary issue, which has been disposed with a finding of the jurisdiction of the Court should not be



decided as preliminary issue and it can be taken up simultaneously with other issues.

It is necessary to know that what is contemplated in ***Rule 2 of Sub Rule 2 of Order XIV of the Code of Civil Procedure***, which reads as follows:-

“(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-
(a) the jurisdiction of the Court, or
(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

Plain reading of order 14, Rule 2(2) postulates that a suit can be disposed of as an issue of law being preliminary issue. If that issue relates to the jurisdiction of Court or barred to the suit created by any law.

From perusal of the plaint, it is manifest that the plaintiffs have claimed their right on the basis of *parcha* granted by the State Authorities in ceiling proceeding, which has been cancelled by the Collector. In paragraph 12 of the plaint, it is



stated that whatever order is passed either by Collector, Purnea or Collector, Khagaria together with S.D.O., Gogri and Anchal Adhikari, Parbatta are all illegal and void *ab initio*. It is submitted by the petitioner, the order passed by the Ceiling Authority is barred by ***Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961***, which reads as under:-

“Bar of jurisdiction of Civil Court.-(1) Save and except as provided in this Act no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or dealt with by the Board of Revenue the appellate authority or the Collector.

(2) No order of the Board of Revenue, the appellate authority or the Collector made under this Act, shall be questioned in any Court.”

Perusing the aforesaid Section of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the trial court totally lost sight of the well settled principle that in terms of Order 14, Rule 2 of the Code of the Civil Procedure once a suit has been tried on all the issues, it is requirement of the Court to give findings on all such issues.



Once the court comes to a finding that it has no jurisdiction to try the suit, it would be a futile exercise to decide other issue on merit of the case. The trial court is required to frame the preliminary issue. If the case is of capable of being decided on the basis of the undisputable facts emerging from pleadings, it is the duty of the court to decide such issue as preliminary, provision under Order XIV, Rule 2 of the Code of Civil Procedure do not create an embargo for taking of issue as jurisdiction of preliminary issue.

In view of the aforesaid facts and provision of law, the impugned order dated 29.11.2013 is set aside.

Accordingly, this Civil Revision Application is allowed.

The learned trial court is directed to frame preliminary issue whether the suit is maintainable in view of Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 and decide the same.

(Khatim Reza, J)

Gaurav Kumar/-

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