

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.66 of 2021

Bandana Devi @ Bandna Devi, Wife of Ashok Poddar, Resident of Village-
Dhusar Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.

... .. Petitioner/s

Versus

1. Tara Devi, wife of Kamleshwari Pd. Gupta, resident of Village- Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
2. Kamleshwari Pd. Gupta, son of Mahadev Pd. Gupta resident of Village- Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
3. Kamal Kishore Thakur, son of Late Madho Thakur resident of Village- Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
4. Sulo Devi, Daughter of Kamal Kishore Thakur, wife of Umesh Thakur resident of Village- Sikkat, P.S.- Barari, District- Katihar.
5. Sima Devi, Daughter of Kamal Kishore Thakur, wife of Ramesh Thakur resident of Village- Madhubani, P.S. K. Hat, District- Purnea.
6. Niranjana Poddar, son of Triveni Poddar resident of Village- Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
7. Vikash Chandra Azad, son of Kamal Kishore Thakur resident of Village- Dhusar Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
8. Bambam Kumar Azad, son of Kamal Kishore Thakur resident of Village- Dhusar Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.
9. Nawab Shankar Prasad, son of Kamal Kishore Thakur resident of Village- Dhusar Tikapatti, P.S.- Tikapatti, District- Purnea, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Chaubey, Sr. Advocate Mr. Prashant Kumar, Advocate Mr. Dineshwar Pandey, Advocate
For the Respondent/s	:	Mr. Raghvendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 26-02-2024

Heard learned counsels for the respective parties on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner



under Article 227 of the Constitution of India for the following reliefs :

(i) For issuance of an order or direction in the nature of certiorari quashing the order dated 12.02.2020 (henceforth the “Impugned Order”) passed by learned Additional District Judge-VIII, Purnea (hereinafter the “Ld. Court below”) in Title Appeal No.21/2017 whereby and whereunder the Ld. Court below was pleased to dismiss the application preferred by the Appellant-Petitioner for framing of additional issue.

(ii) For issuance of an order or direction to the Ld. Court below for framing of the issue i.e. “Whether the Plaintiff No. 1 after purchase of the land in suit through Sale Deed dated 01.07.2009, came in possession over the land in suit and while she was in possession, the Defendant No.1 dispossessed her from the suit land on 10.09.2010 mentioned Schedule B of the plaint?” for just decision of the Title Appeal No.21/2017.

(iii) For grant of such other order or direction for which the Petitioner is found entitled to in the facts and circumstances of the case”.

3. The respondent nos. 1 and 2 (original plaintiffs-respondents) filed Title Suit No.133/2010 for declaration that



the suit land is purchased land of the plaintiffs and possession of the defendants is wrong and illegal. The plaintiffs also prayed for recovery of possession in respect of suit land as mentioned in Schedule B (Lot I & II) of the plaint. Vide judgment dated 10.03.2017, the learned Sub Judge, Dhamdaha, Purnea in Title Suit No.133/2010 allowed the said suit and passed the decree accordingly. Being aggrieved, the defendant no.1/petitioner herein preferred Title Appeal No.21/2017 which is pending adjudication before the learned Additional District Judge-VIII, Purnea. On 19.11.2019, the appellant/petitioner preferred an application for framing of additional issue i.e. “Whether the Plaintiff No. 1 after purchase of the land in suit through Sale Deed dated 01.07.2009, came in possession over the land in suit and while she was in possession, the Defendant No.1 dispossessed her from the suit land on 10.09.2010 mentioned Schedule B of the plaint?. The said application was rejected vide the impugned order dated 12.02.2020.

4. The learned counsel appearing on behalf of the petitioner submits that he does not want to enter into the merits of the case at this stage since the matter is before the learned appellate court, but his grievance would stand redressed if the learned appellate court is directed to consider the additional



issue as part of the Issue No. IV & V as observed by the said court in its order dated 12.02.2020.

5. On the other hand, learned counsel appearing on behalf of the respondent no.1 opposes the submission of the petitioner submitting that it is unnecessary and since the appeal is still pending, all the issues will be taken up and considered by the learned first appellate court.

6. Having regard to the submission of the parties, the point for consideration before this Court is as to whether Issue No. IV & V, as observed by the learned first appellate court, covers the issue sought to be raised as additional issue by the petitioner.

7. Issue Nos. IV & V read as under :

“IV. Whether the plaintiffs are the purchaser of the suit land and have got right, title and interest over the suit land?

V. Whether the defendant first party members dispossessed the plaintiffs from the suit land on 16-09-2009?”

8. The learned first appellate court recorded its finding that these issues clearly covers the additional issue sought to be framed in this case. I am also of the view that once dispossession by defendant first party was claimed and framed



as one of the issues, natural corollary is that the party claiming dispossession must be in possession earlier and it goes without saying that when considering the Issue Nos. IV & V regarding dispossession and title, right and interest, the same would be considered by the learned first appellate court in seisin the matter which has already held that additional issue is covered by Issue Nos. IV & V.

9. With the aforesaid observations, the present petition stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2024
Transmission Date	NA

