

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.125 of 2023

1. Ramashankar Pandey Son of late Bishwanath Pandey Resident of Village-Parmanpur, P.O- Kadricha, Anchal- Dumraon, P.S.- Koran Sarai, District-Buxar.
2. Dulihin Dharmsheela Devi @ Dharmsheela Devi Wife of Ramashankar Pandey Residence of Village- Parmanpur, P.O- Kadricha, Anchal- Dumraon, P.S.- Koran Sarai, District- Buxar.
3. Chunachun Devi Wife of Ramashankar Pandey Resident of Village-Parmanpur, P.O- Kadricha, Anchal- Dumraon, P.S.- Koran Sarai, District-Buxar.
4. Vishnu Pandey under guardianship through his father namely Ramashankar Pandey Resident of Village- Parmanpur, P.O- Kadricha, Anchal- Dumraon, P.S.- Koran Sarai, District- Buxar.

... .. Petitioner/s

Versus

1. Rajiv Ranjan Tiwary Son of Late Shyamji Tiwary Residence of Village and P.O- Basaon Kalan, Anchal- Itadhi, P.S- Itadhi, District- Buxar.
2. Kamlawati Devi Wife of Late Shyamji Tiwary Residence of Village and P.O- Basaon Kalan, Anchal- Itadhi, P.S- Itadhi, District- Buxar.
3. Kiran Devi Wife of Rajaram Singh Residence of Village- Parmanpur, P.O- Kadricha, P.S- Koran Sarai, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Kr. Pandey, Advocate
For the Respondent/s : Mr. Bachan Jee Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

9 16-10-2025 This Civil Revision application has been filed against the judgment and order dated 25.07.2023 passed in Miscellaneous Civil Appeal No. 19 of 2019 by the learned Additional District Judge-III, Buxar whereby, the learned Appellate Court partly allowed the appeal which was filed against the order dated 13.08.2019 passed by the learned Sub Judge-I, Buxar in Title Suit No. 110 of 2019 by which the



learned Trial Court has ordered to file proper court fees under Section 7 IV C of the Court Fees Act and returned the plaint of the plaintiffs-petitioners under Order 7 Rule 10 of the Code of Civil Procedure.

2. The plaintiffs-petitioners filed the suit bearing Title Suit no. 110 of 1999 for declaration that no adoption took place in the year 1993 and registered Adoption Deed dated 13.08.2015, registered partition deed dated 06.11.2017 and Sale Deed dated 25.05.2018 are null and void.

3. On the point of the admission of the plaint, the learned Trial court perused the plaint and report of the Sristedar and came to a conclusion that most of the property is situated at Dumraon Anchal; the property mentioned in Schedule II are of Villages- Parmanpur, Mathila, Badhara and Niyajipur under the Dumraon Anchal and Nawanagar Anchal.

4. The learned Trial Court recorded its finding on the point of territorial jurisdiction and court fees. The learned Trial Court held that most of the property mentioned in the Schedule of the plaint are situated in Dumraon Anchal and Buxar Civil Court have no territorial jurisdiction to try the present suit and according to report of Sristedar, the court fees filed in this case is not proper as per the reliefs claimed by the plaintiffs in view



of Section 7 IV C of the Court Fees Act and accordingly, the direction was given to return the plaint to the plaintiffs under Order VII Rule 10 of the Code of Civil Procedure.

5. Being aggrieved, the plaintiffs filed Miscellaneous Appeal before the District Judge, Buxar. After hearing the parties and perusing the records of the case, the learned appellate court observed that plaintiff nos. 1 and 2 were parties to the impugned adoption deed and plaintiff no. 1 was also party to the impugned partition deed and he identified defendant no. 1 in the Sale Deed also. It is further observed that the three impugned deeds are registered deeds and registered deed has a presumption of valid execution. The grounds of challenge to these deeds are fraud, undue influence and misrepresentation. A party to a document seeking a declaration in a suit that the document is void or not effective against him, such suit seeking such declaration is a suit for cancellation of the document and it is further held that the present suit is actually a suit for cancellation of the documents which create cloud on the plaintiffs' right, title and interest but the present suit is framed in the form of declaration for protection of right, title and interest in the property mentioned in Schedule of the plaint. Purposely, the plaintiffs are not seeking relief of cancellation to avoid *ad*



valorem court fees or to create jurisdiction that is of no use in such suit because the real intention of such declaration is to seek cancellation. It is further held that suit though cast in the form of declaratory relief only, but in substance aiming at setting aside a deed formally executed and registered in accordance with law. The suit of partition or cancellation of a partition can only be brought in the court where property is situated. It is further held that a suit of partition is governed by Section 16(b) of the Code of Civil Procedure, so, a suit for setting aside or cancellation of a Partition Deed would also be governed by Section 16(d) of the Code Of Civil Procedure. The object of seeking such declaration or the effect of the declaration sought is to set aside the sale deed. It means it is a relief that is governed under Section 16(d) of the Code of Civil Procedure. The refuge of Section 20 of the Code of Civil Procedure can only be sought if the provision of Sections 16 to 19 are not applicable in a suit.

6. The learned Appellate Court below held that the property mentioned in the plaint is situated within the jurisdiction of Civil Court Sub Division Dumraon, District-Buxar. The Sub-Divisional Civil Court, Dumraon was inaugurated on 16.07.2015 and the pending record was transferred in compliance of Misc. Order no. 98 of 2015 dated



04.07.2015. The plaintiffs presented the plaint before the Court of Sub Judge I, Buxar on 19.03.2019. After establishment of the Civil Court at Sub-Division, Dumraon, District- Buxar, the Civil Court at Buxar, Sadar, has no jurisdiction to try the suit.

7. So far the point of court fees is concerned, the trial court has decided the points of territorial jurisdiction and the court fee simultaneously. When the lower court had no territorial jurisdiction, it was not competent to decide the suit on the point of court fees. The findings of the learned trial court recorded on the issue of court fees was set aside by the lower Appellate court.

8. Considering the concurrent findings of the learned Courts below on the point of territorial jurisdiction, it is apparent from the plaint that the property mentioned in the Schedule of the plaint falls under the jurisdiction of the Sub-Divisional Civil Court, Dumraon, District- Buxar but the plaintiffs' presented the suit before the learned Sub Judge-I, Buxar on 19.03.2019, i.e. after establishment of the Civil Court at Sub Division Dumraon, District- Buxar.

9. Having regard to the foregoing reasons, this court does not find that learned Appellate Court below has committed any error of jurisdiction or illegality in passing the impugned



order.

10. Accordingly, this Civil Revision application is
dismissed having no merit in it.

(Khatim Reza, J)

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