
(1997) 12 PAT CK 0013
In the Patna High Court
Case No : C.R. No. 1526 of 1997

Smt. Vasanti Devi and Another

APPELLANT

Vs

Yadunandan Mahto

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d)

Citation : (1997) 12 PAT CK 0013

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Sinha, Devendra Prasad and Shashi Nath Jha, for the Appellant; Shyam Kishore Sinha and Jagdishwar Prasad Singh, for the Respondent

Judgement

S.N. Jha, J.—This civil revision by the defendants arises from the order dated 4.8.97 passed by the 2nd Munsif, Patna, in Title Suit No. 82 of 1994 rejecting their petition to reject the plaint under Order 7 rule 11 (d) of the Code of Civil Procedure. The plaintiff-opposite party has filed the aforementioned suit for declaration of his title and confirmation of possession or in the alternative for money decree for Rs. 20,000/-. According to the plaintiff, Sheo Narayan Lal, father of the defendant 1st party i.e. the petitioners herein filed Title Suit No. 126 of 1964 against Ram Narayan Singh, father of defendant 2nd party and vendor of the plaintiff for partition of the lands purchased jointly by him and Ram Narayan Singh. A preliminary decree was passed in the suit with respect to his half share. Both the plaintiff and the defendants of that suit filed appeals, which were dismissed by the 7th Additional District Judge, Patna, on 16.7.76. Ram Narayan Singh, thereafter, filed second appeal which too was dismissed by this Court. The plaintiff, In the meantime, purchased the suit property from Ram Narayan Singh on 26.5.74. According to the plaintiff, the processes in regard to delivery of possession of the property pursuant to the decree passed in the said Title Suit No. 126 of 1964 were effected on paper and he had no knowledge about the same.

2. The petitioners filed the aforementioned application to reject the plaint on the grounds of res judicata, lis pendens as all well as limitation. The court below has rejected the petition observing that the Issues will be dealt along with other Issues at the stage of trial.

3. I have heard counsel for parties. Ordinarily, decision on a matter which Involves determination of fact should await the stage of trial. The question, as to whether the present suit is barred by principles of res judicata etc. seems to involve questions of fact. In the facts of the case, however, I am inclined to direct that the issues of res judicata and limitation be decided as preliminary issues so that if the suit is found to be barred by res judicata and/or limitation, the defendants may be saved of the unnecessary and avoidable harassment.

4. I have not gone into the merit of the contentions, for if I would have done so I might have expressed opinion which could cause prejudice to one or the other party. I would still clarify that anything said in the present order should not be interpreted as the opinion of this Court. The impugned order dated 4.8.97 is set aside and the civil revision is disposed of accordingly.