

(2019) 12 PAT CK 0036

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 1586 Of 2019

Vijay Rai @ Vijay Singh And Ors

APPELLANT

Vs

Birendra Rai And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11

Citation : (2019) 12 PAT CK 0036

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Naresh Prasad

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed "for quashing of the order dated 17.07.2019 passed in Title Suit No. 149 of 2012 by learned Sub-Judge-IX, Gopalganj, whereunder and whereby the petition dated 09.02.2018 filed by the Defendant No. 1 under Section 11 of the Code of Civil Procedure has been rejected."

2. Learned counsel for the Defendants/Petitioners submits that Title Suit No. 268 of 1991 had earlier been filed relating to the suit land at the instance of Bunnial Ram, who had purchased the suit land from the plaintiffs/respondents (1st Set) of the present case. The suit was dismissed on 20.06.1996, inter lia, holding that the sale deed executed in favour of the purchaser Bunnial Ram by the present plaintiffs was not valid as the land had been transferred without title. It is therefore submitted that in view of the sale of the suit land by the plaintiffs/respondents (1 st Set) having already been held to be without title, the matter was set at rest in Title Suit No. 268 of 1991 and the present suit was barred by the doctrine of res judicata. A petition under Section 11 of the Code of Civil Procedure was accordingly filed by Vijay Rai defendant no. 1/petitioner no. 1, for dismissing the suit on such grounds.

3. Heard learned counsel for the Defendants/Petitioners and perused the material on record. Neither the plaint of Title Suit No. 268 of 1991 nor the plaint of the present suit, nor even the judgment dated 20.06.1996 dismissing the aforesaid title suit, have been enclosed with the present petition. It is however not in dispute that Title Suit No. 268 of 1991 had been filed by Bunnilal Ram unlike the present suit which has been filed by the plaintiffs/respondents (1st Set) . The impugned order dated 17.07.2019 specifically states that the two suits are between different parties and the subject matter is also distinct. Learned counsel for the Defendants/Petitioners has not been able to demonstrate otherwise.

4. In this view of the matter, therefore, this Court is of the view that the ingredients of Section 11 of the Code of Civil Procedure are not satisfied. The petition is devoid of merit and stands dismissed.