

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No. 708 of 2014

1. Most. Kunti Kuer, wife of Late Sheomurat Dubey
2. Ram Chandar Dubey
3. Lakshman Dubey
4. Ram Hankar Dubey, (2 to 4 are sons of Late Sheomurat Dubey), All are R/O
Village - Dubauli, P.O. - ORA, P.S. - Belaon, District - Kaimur (Bhabua).

... .. Appellant/s

Versus

1. Ajay Kumar Divedi @ Udaie Dubey, S/O Late Ram Awadh Dubey, R/O -
Village-Dubauli, P.O.-Ora, P.S.- Belaon, District - Kaimur.
2. Reema Kumari, W/O Pappu Pandey, D/O Late Rajendra Dubey, R/O –
Village - Nibyan, P.O. + P.S. - Bhagwanpur, District - Kaimur (Bhabua).
3. Ritu Kumar, Wife of Arun Choubey, D/O Late Rajendra Dubey, R/O –
Village - Bashuhari, P.O.- Khajura, P.S.- Belaon, District - Kaimur.
4. Shri Kishun Dubey, S/O Late Sitaram Dubey,
5. Baliram Dubey, S/O Late Sitaram Dubey,
6. Ram Bharat Dubey, S/O Late Sitaram Dubey,
7. Akshaibar Dubey, S/O Late Ramjag Dubey,
8. Tara Devi, Wife of Akshaibar Dubey,
9. Asha Kuer, wife of Late Rajendra Dubey,
10. Pramod Dubey, Son of Late Rajendra Dubey,
11. Rajbansh Dubey @ Jagdish Dubey, Son of Sri Kawal Dubey,
12. Ramashankar Dubey, Son of Sri Kawal Dubey,
13. Ram Bali Dubey, Son of Sri Kawal Dubey,
14. Mithaielal Dubey @ Bajrangi Dubey, Son of Rajbansh Dubey,
15. Vijay Shankar Dubey @ Vijayee Dubey, Son of Sri Kishun Dubey,
16. Bawan Prasad Dubey @ Sanjay Dubey, Son of Ram Bharat Dubey,
17. Kamala Kuer, wife of Late Ram Awadh Dubey, All R/O - Village- Dubauli,
P.O.- Ora, P.S.- Belaon, District - Kaimur (Bhabua)
18. Yashumati Devi, wife of Dadan Tiwari, D/O Late Satram Dubey, R/O –
Village & P.O.- Bare, P.S. - Bhabua, District - Kaimur (Bhabua)
19. Jagdamba Devi, Wife of Yamuna Dubey and D/O Sri Kawal Dubey, R/O -
Village- Ekwani, P.S.-Bhagwanpur, at present Belaon, District - Kaimur
(Bhabua)
20. Sudama Devi, Wife of Raj Mangal Tiwari, D/O Late Sri Kawal Dubey, R/O
- Village- Awari, P.O. and P.S.- Mohania, District - Kaimur.



21. Prabhawati Devi, wife of Raj Bansh Mishra, D/O Late Sri Kawal Dubey, R/O - Village- Kura, P.O. and P.S.- Mohania, District - Kaimur.
22. Lalti Devi, Wife of Tandan Mishra, D/O Late Sri Kawal Dubey, R/O – Village - Kura, P.O. and P.S. - Mohania, District – Kaimur (Bhabua).
23. Meena Devi, wife of Radhe Shyam Dubey, D/o Late Sri Kawal Dubey, R/O – Village - Bahari, P.O. - Akhlaapur, P.S. - Bhabua, District - Kaimur.
24. Pramila Devi, Wife of Madan Dubey, D/O Late Sri Kawal Dubey, R/O – Village - Nauan, P.O. and P.S. - Bhabua, District - Kaimur.
25. Manju Devi, Wife of Sri Indu Ojha, D/O Rajendra Dubey, R/O – Village - Kharahna, P.S. - Kudra, District - Kaimur.
26. Sanju Devi, wife of Ram Pravesh Tiwary, D/O - Rajendra Dubey, R/O – Village + P.O. - Ora, P.S. - Belaon, District - Kaimur (Bhabua).
27. Anju Devi , Wife of Madan Dubey, D/O Rajendra Dubey, R/O - Village and P.O.- Umapur, P.S.- Bhagwanpur, District - Kaimur.
28. Anshu Devi, Wife of Ram Raj Tiwary, D/O Rajendra Dubey, R/O - Village- Chandrodaya, P.O. - Nauhtta, P.S. -Belaon, District - Kaimur.(Bhabua).
29. Pradhan Murli Manohar Prasad, Advocate, G.A.L. Civil Court, Bhabua, P.O. and P.S.- Bhabua, District- Kaimur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vinod Kumar Seth, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 02-04-2019

Heard learned counsel for the parties.

2. Plaintiff-respondents 1 to 3 had filed Title Suit No. 10 of 2013 in the Court of learned Munsif, Kaimur against the appellants herein and others. The suit was for declaration that judgment dated 22.08.2008 and decree dated 28.08.2008 passed in Title Appeal No. 39 of 1991 by the learned Fast Track Court-I,



Kaimur at Bhabua and judgment dated 11.01.2012 passed in Second Appeal No. 455 of 2008 by the Hon'ble Patna High Court are null and void and non est in the eyes of law.

3. The plaintiff asserted that Title Suit No. 90 of 1983 was filed by one Sheo Murat Dubey claiming a Rasta in between Plot No. 309 and 310. Plaintiff No. 1 was minor. Defendant No. 8 in Title Suit No. 90 of 1983 and other defendants no. 14, 15 and 17 were also minors. Mr. Pradhan Murali Manohar Prasad, Advocate was appointed guardian ad litem in the suit. The suit was dismissed as the plaintiff left Pairavi of the case. Thereafter plaintiff of that suit preferred appeal before the learned District Judge vide Title Appeal No. 39 of 1991 which was heard and decided by learned Fast Track Court-1, Bhabua. The guardian ad litem appointed during suit was not impleaded as guardian of the minor defendants nor he was ever removed from the guardianship by order of the Court nor any other person was appointed as guardian in the appeal. Though the plaintiffs were shown minors in title appeal aforesaid, the appeal was allowed and the judgment of the trial court was set aside. Thereafter the matter went up to the High Court in Second Appeal No. 455 of 2008 and even the High Court did not consider as to whether the minors were duly



represented in the appeal or not. Thus, the challenged judgments of the appellate courts were against the minors.

4. By order dated 25.02.2013 passed in Title Suit No. 10 of 2013, the trial court dismissed the suit as barred by res judicata for the reason that the same dispute was already decided in Title Suit No. 90 of 1983 between the same parties. Order dated 25.02.2013 aforesaid was challenged in Title Appeal No. 10 of 2013 and by the impugned order dated 12.09.2014, the learned 1st Additional District Judge, Bhabua set aside the order of the trial Judge and remitted back the matter to the court below to proceed according to law.

5. The challenge is on the ground that this was a fit case for rejection of the plaint under Order 7, Rule 11(d) CPC and the trial court rightly rejected the plaint whereas the lower appellate court acted against the law by setting aside the said order.

6. Attention has been drawn to the provisions of Order 7, Rule 11(d) which according to the appellant is applicable in the facts and circumstances of this case. Order 7, Rule 11(d) says that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law.

7. The statement in the plaint does not show that the suit is barred under any law. The statement shows that in earlier



proceedings, order were passed at different levels against the minors without proper representation of the minors, therefore, that was not binding on the minors and for declaring them null and void, the present suit was filed. Even if it is assumed for argument sake that there is an arguable case that the suit is barred by res judicata, this is a disputed question of fact which cannot be gone into at the stage of consideration of admission or rejection of the plaint. The disputed question of fact or mixed question of fact and law can only be decided after considering the pleadings and evidences of the parties. Therefore, in my view, the impugned order requires no interference. Accordingly, this appeal stands dismissed.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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