

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.559 of 2018

1. Dewaki Devi W/o Late Manohar Prasad.
2. Sunil Kumar,
3. Anil Kumar,
4. Rajeev Kumar all Sons of Late Manohar Prasad, all resident of Mohalla- Jhulganj, Bilsa Devi Path, P.O.- New Godown, Police Station- Kotwali, District- Gaya.

... .. Petitioner/s

Versus

Surendra Prasad Alias Suresh Prasad Son of Late Chhathu Mahto, resident of Mohalla- Jhulganj, P.O.- New Godown, Police Station- Kotwali, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 28-07-2022

Heard Mr. Binod Kumar, learned counsel for the petitioners.

2. The present application has been filed challenging the order dated 05.02.2018 by the defendants/petitioners whereby the learned court below has rejected the petition filed by the petitioners under Order VII Rule 11(a) and (d) of the Civil Procedure Code for rejection of the plaint.

3. Learned counsel for the petitioners submits that the suit does not disclose the cause of action and from perusal of paragraph-10 of the plaint, it would be evident that the Revisional Municipal Survey Record of Right has not been finally published



and, therefore, as per Section 103-B of the Bihar Tenancy Act, 1885, the presumption regarding correctness of the final publication of Records of Rights shall only be taken if the Records of Right has finally been published. He next submits that in the plaint, the respondent/plaintiff has admitted that the Records of Right has not finally been published. Accordingly, the submission is that the plaint does not disclose the cause of action inasmuch as the respondent/plaintiff has appended Schedule-4 in the plaint which pertains to the Records of Right which has not finally been published and only draft publication of the same has been done in this regard.

4. I have heard learned counsel for the petitioners and have gone through the material on record along with the impugned order. In paragraph-14 of the plaint, the plaintiff has disclosed the cause of action stating therein that the cause of action arose on 07.02.2016 whereas the defendants 1st set tried to disown the title of plaintiff over schedule-4 of the plaint and tried to infringe the right of plaintiff over it on the pretext that their ancestors' names have been recorded jointly with respect to schedule-4 of the plaint situated at Mohalla Jhilganj, Gaya Municipal Survey Revenue Ward No. 3, Anchal Nagar Anchal Chandauti, P.S. Kotwali, under Gaya Municipal Corporation. In the body of the plaint, the



plaintiff/respondent has also stated that the defendants/petitioners started threatening the plaintiff that in revisional survey, the schedule-3 of the plaint has been renumbered and in the Revisional Municipal Survey Record of Right, *Khata* has been opened in the joint names of all the brothers of late Chhattu Mahto and they will dispossess the plaintiff and sell the same to local anti-social elements to destroy the properties of the plaintiff. From perusal of the plaint, it further appears that the reliefs claimed by the plaintiff/respondent is as follows, based upon the bundle of facts stated in the plaint:-

i) The plaintiffs title over schedule-4 of the plaint be declared against defendant and possession of plaintiff be confirmed over it.

ii) Defendants be permanently restrained from transferring, mortgaging, lease, rent agreement, encumbering or executing any registered or unregistered deeds or deed jointly or severally with respect to schedule-4 of the plaint.

(iii) Defendants or the men under them be permanently restrained from making any interference, obstruction, encroachment over peaceful enjoyment and dealing of schedule-4 of the plaint by the plaintiff.

(iv) The cost of the suit be awarded to the plaintiff against defendant.



5. From perusal of the impugned order, I find that the court below has refused to reject the plaint after coming to the conclusion that plaintiff has filed the suit for declaration of title and permanent injunction and the suit has not been filed to declare that the entry of draft *khatiyani* is not binding upon the plaintiff. The court below has further come to the conclusion that in the present case though the plaintiff has mentioned about the entry in draft *khatiyani*, but, the reason to file the suit has been shown that the defendants are trying to interfere in the right, title and interest of the plaintiff.

6. In view of the aforesaid discussion and upon perusal of the plaint, I find that the plaint discloses the cause of action.

7. Accordingly, I do not find any infirmity in the impugned order.

8. This application, is accordingly, dismissed.

9. There shall be no order as to costs.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.07.2022
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