

The Court of Civil Judge Junior Division, Shahpur Patory
(Samastipur)

T.S. No. 38/2020

Domni Devi & Others.....Plaintiffs

Versus

Prema Kumari & OthersDefendants

01-04-2024

Parties present, record has been produced for order on the petition of the plaintiffs u/o 12 of the C.P.C dated 12/01/2024. Rejoinder to this petition is filed on behalf of defendants dated 19/02/2024.

It has been submitted by the ld counsel for the plaintiffs that the present petition is being filed u/o 12 pf the C.P.C. under following circumstances. That it is an admitted fact that, in support of there claim both parties have submitted there sale deed before this court but non of them have objected or challenged the sale deed of each other before any court, in any manner till now. It is also an admitted fact that, cause of action arose for filling the present suit, when defendant forcibly dispossessed the plaintiffs from the suit land which the purchased from others by the registered sale deed after payment of full considretion ammount, and Jamabandi of which was also created without any objection by any person, on the basis of which they have been paying rent to the govt.. That during the measurement conducted by the SKPC, it has transpired that on the basis of sale deed submitted by the parties, Plaintiffs are entitle to possession of 2 Kattha and 7 dhur of land. And defendants are entitled to possession over 6 Kattha and 13 dhur of land, but during the course of measurement it has also be found that defendants are in possession over 10 Kattha and 4 dhur i.e. more than 3 kattha and 11 dhur of land including the land of plaintiffs than the sale deed submitted by them. While the plaintiffs are completely out of possession of the land purchased by themself and surprisingly till today defendants have not filded any satisfactory explanation nor any document befor this court as to how and while and under what provision of law they are in possession over 10 kattha 4 dhur land which is apparently beyond the limit of theirs sale deed. That from the aforesaid conduct of defendants it clearly appears that without having any document of there possession, they have illegally and forcibly grabbed the land of plaintiff and others, and in order in continue there illegally possession over the land of plaintiffs they have been trying to prolong the disposal of the suit which deserved to be considered by this court for end of justice. It is therefore, prayed that this court be pleased to allowd this petition and disposed of present suit in exercise of order 12 of CPC for the end of justice.

The defendants have ardently opposed the prayer of the plaintiffs and submitted that the petition under reply is not maitainable either in the eye of law as well as fact also. The plaintiffs have got no cause of action and right to file such petition at this stage of the suit. The plaintiffs have maliciously and malafidely filed such petition with a view to put unnecessary pressure on defendants. Defendants have filed their written statement which has been admitted and the plaintiffs have got skpc appointed and after measurement of spot the pleader commissioner was submitted report which is being available on record, thereafter plaintiffs should proceed the case for settling the issue and

trial further, but the plaintiffs have knowingly and deliberately filed such petition for lingering the proceeding of the suit. That the plaintiffs have not disclosed in their petition in which rule of Order 12 of C.P.C. the present petition has been filed hence the petition of plaintiff's is not maintainable rather the same is fit to be dismissed on this score. It is provided under the provision of Order 12 of C.P.C. that the suit has been disposed of without determination of any other question between the parties on the basis of admitted facts either in their pleadings or other was orally or writing but the plaintiffs have not clearly stated in their petition that in which paragraph of defendants written statement these defendants have admitted the claim and case of the plaintiffs on which basis the suit is necessary to be disposed off without proceeding the trail of suit. These defendants have not admitted any fact in written statement as stated in the plaint as filed by the plaintiffs or the documents of the plaintiffs rather these defendants have specifically denied the whole case and claim of plaintiffs in their w.s. and on basis of statement of the plaint as stated by the plaintiffs the suit cannot disposed off without any trial under order 12 of C.P.C. It is therefore prayed to reject the petition under with heavy cost.

Upon hearing both side perused the entire case record including petition and its rejoinder, plaint and written statement, it appears that plaintiff has filed the present suit for the declaration of title and recovery of possession including relief of permanent injunction over disputed land. On perusal of plaint it transpires that plaintiffs had sought only relief of declaration of title and after amendment in plaint relief of recovery of possession has been added vide order dated 29-01-2024. while plaintiffs have stated in his petition that cause of action arose for filing the present suit when defendant forcibly dispossessed the plaintiff from the suit land. So, the fact stated in this petition is contradictory in relation to the original plaint. However, there is no any specif acceptance of fact in written statement regarding the plaint which has been stated in present petition. Therefore, provision of Order 12 C.P.C. is not applicable in present situation. Considering aforesaid fact and circumstances and submission of both sides this court finds not merit to determine the suit on the basis of order 12 C.P.C. and accordingly the present petition is hereby rejected as not maintainable.

Put up record on **15-04-2024** for hearing on section 89 C.P.C.

Munsif,
Shahpur Patory