

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8880 of 2014

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1. Mukti Kumar Madhu S/O Sri Jadu Nandan Yadav resident of Village Dhobania, P.S. AND P.O. Naugachia District- Bhagalpur

.... Petitioner/s

Versus

1. Smt. Renu Devi Wife of Sri Binod Prasad Jaiswal (Bhagat) resident of Naugachia Bazar, P.S. AND P.O. Naugachia District- Bhagalpur
2. Most. Maya Devi W/o Late Subodh Jaiswal
3. Sri Shiva Kumar Jaiswal S/o Late Subodh Jaiswal
4. Sri Ram Narayan Jaiswal S/o Sri Feku Chand Jaiswal all are residents of Village and P.O. Dholbajja, P.S. Dholbajja, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Sumiran Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 18-12-2015 Heard Mr. Ram Sumiran Singh, learned counsel appearing for the petitioner.

The defendant-petitioner has filed this application under Article 227 of the Constitution of India against the order dated 28.01.2014 passed by the Munsif, Naugachia in Title Suit No. 101 of 1997, whereby the court below rejected the application filed by the petitioner under Order VII Rule 11 of the Civil Procedure Code (for short C.P.C.).

The plaintiff filed the suit for declaration of title and also prayed for declaration that the vendor of the defendant has no title to transfer the property in favour of the defendant.



The defendant-petitioner appeared and filed written statement and also issues were framed and the case was fixed for adducing evidence. At this stage, an application under Order VII Rule 11 C.P.C. has been filed by the defendant-petitioner praying rejection of the plaint mainly on three grounds; firstly, that the plaintiff has got no cause of action and even if, there is cause of action, which arose in 1978; secondly, since the cause of action of the plaintiff arose in the year 1978, therefore, the present suit is barred by law of limitation; thirdly, before the Assistant Settlement Officer, the plaintiff filed objection in the year 1984, which was rejected by the Assistant Settlement Officer and against that order, the plaintiff did not file either appeal or revision before the higher forum, therefore, that issue will operate as *res-judicata* in the suit. On these three grounds, the prayer was made for rejection of the plaint and the court below by the impugned order rejected the application filed by the petitioner.

So far as the first ground taken by the petitioner and argued by the learned counsel for the petitioner before this Court that the plaintiff has no cause of action to file the suit is concerned, it may be mentioned here that Order VII Rule 11 Clause A of the C.P.C. provides that the plaint should be rejected, if the plaint does not disclose the cause of action. Therefore, there



should not be any confusion between non-disclosure of cause of action in the plaint and the cause of action accrued to the plaintiff. So far former is concerned, that can be decided under Order VII Rule 11 of the C.P.C., but so far the plaintiff has got any cause of action or not is concerned, that can be decided at the time of judgment of the suit.

So far as question of *res-judicata* or limitation are concerned, it may be mentioned here that those are matters of evidence and are dependent on evidence. It cannot be said that in the present case, the question of *res-judicata* is pure question of law and likewise the limitation is concerned also, according to the petitioner that the plaintiff's right so accrued, therefore, the suit is barred by limitation, is also not a pure question of law. It is well settled law that at the time of hearing of application under Order VII Rule 11 C.P.C., only the contents of the plaint is to be looked into and for that purpose, the averments made in the written statement and in the application filed by the petitioner under Order VII Rule 11 C.P.C. are not at all relevant.

From perusal of the impugned order, it appears that the court below after looking into the averments and considering the points raised by the petitioner, rejected the application. Therefore, the same cannot be interfered with within the supervisory

jurisdiction under Section 227 of the Constitution of India.

Thus, this writ application stands dismissed.



(Mungeshwar Sahoo, J)

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