

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.74 of 2013

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Anand Prasad Singh S/O Late Akhileshwar Prasad Resident Of Village-
Bargaon, P.S.- Konch, District- Gaya, At Present Residing At Mohalla West
Church Road, Gaiwal Bigha, P.S.- Civil Lines, District And Town Gaya.

.... Petitioner/s

Versus

1. Shyam Kishore Singh S/O Late Bachu Singh.
2. Madhoosudan Singh S/O Late Bachu Singh.
3. Smt. Madhusudan Devi Wife of Shyam Kishore Singh all Resident Of
Village- Bargaon, P.S.- Konch, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhuresh Prasad, Adv.

Mr. Shyameshwar Kr. Singh, Adv.

Mr. Abhay Shanker, Adv.

For the Respondent/s : Mr. K.N. Choubey, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

13 08-09-2015

Heard the learned counsel for the parties.

This revision application has been filed assailing the
order dated 16.04.2013 passed in Title Suit No. 51 of 2011 by Sub
Judge-IVth Gaya whereby he has rejected the petition filed on
behalf of the defendant-petitioner under Order-VII Rule 11 (d)
praying for rejection of the plaint.

The plaintiff-opposite parties have filed the suit for
specific performance of contract praying for a decree directing the
defendant-petitioner to execute and register the sale deeds on the
terms and conditions mentioned in the deed dated 12.04.2005 and



05.06.2006. The defendant-petitioner appeared and filed the petition on 16.07.2012 under Order VII Rule 11 (d) C.P.C. praying to reject the plaint as the plaintiffs have based their suit on an unregistered deed on the basis of which they have also claimed to have come in possession. It has been specifically stated in the petition that the suit was barred under Section 53 (A) (amended) T.P. Act and Section 17 (amended) and 49 (amended) of the Indian Registration Act. The learned court below by the impugned order has not determined the issue of bar of the suit by law and instead has dismissed the petition filed by the petitioner holding that there is requirement to determine the nature of the deeds (described as consent deed) and also the case of payment of cash amount to the defendant.

It has not been controverted by the learned counsel appearing for the plaintiff-opposite parties that the deeds which are the basis of the suit are not sale deeds but are consent deeds. From the perusal of the copies of the said two deeds annexed with the revision application it becomes evident that the plaintiffs have been put in possession over the suit land on that basis and the opportunity has been granted to the plaintiffs to get the sale deed executed and registered at their convenience.

The purpose of the provision of Order VII, Rule 11

C.P.C. is by now well settled and it has been laid down that if on a meaningful reading of the plaint, it is manifest that the suit is bound to be doomed, in such a case the jurisdiction under the said provision for rejection of the plaint can be exercised. In the case of **Saleem Bhai Vs. State of Maharashtra, A.I.R. 2003 S.C. 759** the Apex Court has also ruled as follows:

“9.....A perusal of O. VII, R. 11, C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint.

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therefore, a direction to file the written statement without deciding the application under O. 7, R. 11, C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well

as procedural irregularity.....”

Tested on the anvil of the aforesaid principles, it is transparent that the impugned order cannot be sustained as the learned court below has summarily rejected the petition/objection filed under Order VII, Rule 11 C.P.C. by the defendant-petitioner.

Accordingly, the present revision application is allowed and the impugned order is set aside. The learned court below is directed to pass a fresh order on merits on the petition dated 16.07.2012 filed by the petitioner under Order VII, Rule 11 (d) C.P.C. after granting opportunity of hearing to the parties.

The civil revision application, accordingly, succeeds.

(V. Nath, J)

Devendra/-

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