

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16180 of 2010

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Vidhya Singh S/O Late Vishwanath Singh R/O Vill.- Bhaluwa, P.O.-
Bhaluwa, Pragna- Bara, P.S.- Barharia, Distt.- Siwan

.... Petitioner/s

Versus

1. Satrugan Mishra S/O Late Suresh Mishra R/O Vill.- Bhaluwa, P.O.-
Bhaluwa, Pragna- Bara, P.S.- Barharia, Distt.- Siwan

2. Satyadeo Mishra S/O Late Suresh Mishra R/O Vill.- Bhaluwa, P.O.-
Bhaluwa, Pragna- Bara, P.S.- Barharia, Distt.- Siwan

...Plaintiffs in the court below/Respondents 1st set

3. Nawal Kishore Singh S/O Yoge Singh R/O Vill.- Sadipur, P.O.- Sadipur,
P.S.- Goriya Kothi, Distt.- Siwan

....Defendant no.2 in the court below/Respondent 2nd set

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Appearance :

For the Petitioner/s : Mr. Javed Aslam

For the Respondent/s : Mr. Raju Giri

Mr. Santosh Kr. Mishra

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

10 21-08-2015 Heard counsel for the defendant-petitioner and Mr. Raju
Giril for the plaintiff-respondent(s).

The writ application under Article 227 of the
Constitution of India is directed against the order dated 31.07.2010
passed by the Sub Judge 1st Siwan in T.S. No. 241 of 2007
whereby the application filed by the defendant-petitioner under
Order 7 Rule 11(d) of the Code of Civil Procedure (for short ‘the
Code’) was directed to be considered as one of the issues at the
trial of the suit.

The suit was filed by the plaintiff for declaring his title



over the suit land and also for restraining the defendant from his dispossession. Further prayer was to declare the sale deed executed in favour of the defendant in the year 1986 as void/inoperative. The defendant-petitioner appeared and filed the application (Annexure-2) for rejection of the plaint. The trial court found that the suit was not only for declaring the sale deed null and void but also for other substantive relief(s). Having held so, the trial court deferred consideration thereof until final hearing of the suit. In other words, the trial court held that appropriate issue can be framed and after allowing the parties to adduce evidence a finding can be recorded thereon. Aggrieved thereby the present writ petition is filed.

Counsel for the petitioner submitted that earlier to filing of the suit a proceeding between the plaintiff and the defendant was initiated under section 144 Cr. P.C in which the sale deed was brought on record. The plaintiff had therefore knowledge of the existence of the sale deed executed in favour of the defendant. Even then, the suit was filed beyond period prescribed for getting such registered deed of conveyance set aside. The trial court failed to consider this aspect of the matter and erred in deferring the consideration of the application and not rejecting the plaint outright.



Mr. Giri conversely submitted that the question of limitation is a mixed question of fact and law. For the purpose of consideration of any such application filed under order 7 Rule 11(d) of the Code the averments made in the plaint is/are only required to be looked into. Referring to paragraph 5 of the plaint, it has been submitted that a clear averment is made therein about the recent knowledge of the sale deed in favour of the defendant. He has relied in support of his contention on **AIR 1987 Delhi 165 (Arjan Singh & Ors. Vs. Union of India & Ors.)** as also **AIR 1998 Allahabad High Court 260 (Purnmasi Yadav vs. Narbedeshwar Tripathi (Para 7))**.

Order 7 Rule 11(d) of the Code reads as under:-

“(d) Where the suit appears from the statement in the plaint to be barred by any law”

It appears therefrom that for the purpose of rejection of the plaint the statements made in the plaint is only required to be noticed. No other fact therefore can be considered by the court while considering such application for rejection of the plaint i.e. the rejection of the suit at the very threshold. In the case of **Arjan Singh** (supra) a single bench of the Delhi High Court reiterated the same principle in paragraph 12 thereof which reads as under:-



“12. This discussion was meant to show that this question of limitation raised by reason of the statement in the written statement is different from the limitation involved in rejecting the plaint. If the plaint itself shows that the claim is barred by time, then the plaint can be rejected. However, if the real question of limitation is connected with the merits of the claim in the suit then it has to be tried along with other issues. I would accept this appeal only to the extent that the plaint could not be rejected but, I direct that this issue of limitation should be tried along with other issues in the suit because, notwithstanding what is said above, the suit may still be barred by time. The result would be that the suit will be decided on merits and the issue of limitation will also be re-decided, if necessary,. I leave the parties to bear their own costs.

Again the legal proposition was elucidated to the same effect by the Allahabad High Court in *Narbedeshwar Tripathi* (supra). Paragraph 7 thereof is relevant on which the counsel for the plaintiff has relied. On going through the judgment it appears to the Court that the same was rendered in entirely different factual matrix.

The contention of the petitioner that the plaintiff had knowledge of the sale deed while contesting the 144 Cr.P.C.

proceeding itself presupposes that the court is required to look into materials other than those stated in the plaint. The provision under Order 7 Rule 11(d) is specific in this regard. The trial court is not expected to travel beyond the plaint while considering such issue as in case the same is found sustainable what is required to be rejected is the plaint.

For the reasons aforesaid and the view taken by the trial court that the matter will be examined during hearing of the trial do not appear to be erroneous and/or wholly perverse meriting interference.

The application is dismissed.

(Kishore Kumar Mandal, J)

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