

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4856 of 2014

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Rajendra Sah

.... Petitioner/s

Versus

Jamila Khatoon & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Kumar Sinha No.-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 21-01-2016

Heard learned counsel for the petitioner.

The defendant-petitioner has filed this application under Article 227 of the Constitution of India against the order dated 23.01.2014 passed by the learned Munsif-II, Begusarai in Title Suit No. 04 of 2012 whereby the Court below rejected the application filed by the defendant-petitioner under Order 7 Rule 11 C.P.C. as it is not maintainable.

Perused the order passed by the Court below and the application under Order 7 Rule 11 C.P.C which has been annexed as annexure-2. This application has been filed under Order 7 Rule 11 Read with Order 1 Rule 9 & 13 C.P.C. According to the petitioner the suit is bad for non-joinder to necessary party and that the plaintiff has no cause of action as such the suit is not maintainable and that the suit is time barred. In the relief portion prayer has been made that the preliminary issue be framed and

after hearing the parties the suit may be dismissed.

So far the relief claimed in the said application is concerned it is misconceived. No such relief can be granted in application under Order 7 Rule 11 C.P.C. So far the framing of preliminary issue is concerned, the question is as to whether the suit is bad for non-joinder of necessary party or the suit is barred by law of limitation are not pure question of law. Therefore, the same cannot be framed as preliminary issue as provided under Order 14 Rule 2 (2) C.P.C. So far the relief that the plaintiff has no cause of action is concerned, it may be mentioned here that Order 7 Rule 11 provides that the plaint can be rejected, if from the statements made in the plaint, it does not disclose cause of action then only the plaint can be rejected. Here it is not the case of the petitioner but the case of the petitioner is that the plaintiff has no cause of action that cannot be examined at this stage under Order 7 Rule 11 C.P.C. Therefore, the Court has rightly rejected the application. Thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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