

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4733 of 2016

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Bhanu Pratap Singh & Ors

.... Petitioner/s

Versus

Ravindra Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-05-2016 Heard the learned counsel, Mr. Vinay Mistry on behalf of the petitioner.

By the order dated 12.01.2016, the learned Sub Judge Paliganj in Title Partition Suit No.226 of 2004 rejected the application filed by the petitioner to reject the plaint.

The plaintiff respondent filed the aforesaid suit for partition claiming share mentioned in the plaint. The petitioner filed application under Oder 7 Rule 11 (a), (b) and (c) of the Code of Civil Procedure.

So far Clause (a) is concerned, it is submitted that the suit does not disclose cause of action. So far clause (b) is concerned according to the petitioner, the suit property is under valued and Clause (c) is concerned, it is stated that the petitioner is liable to pay advelorum Court fee.

From perusal of the impugned order, it appears that the Court

below found that the plaint discloses cause of action and the other clauses are not applicable in the present case.

It is settled principal of law whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averment made in the plaint are taken to be correct in the entirety a decree would be passed. In ascertaining whether the plaint shows a cause of action, the Court is not required to make elaborate enquiry into doubtful or complicated question of law or fact. Reference may be made to the decision of the Hon'ble Supreme Court in the case of *Liverpool & London S.P. & I Association Ltd. Vs. M.V.Sea Success I (2004) 9 SCC 512*.

In the present case at our hand, the suit for partition has been filed. Now, therefore, the finding of the Court below that there is cause of action disclose in the plaint cannot be interfered with in supervisory jurisdiction as the finding is of finding of fact. I, therefore, find no reason to interfere with the impugned order.

Accordingly, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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