

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5110 of 2016

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Sanjay Pandit & Anr

.... Petitioner/s

Versus

Kishori Pandit & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 25-07-2016

Heard the learned counsel, Mr. Mahesh Prasad No.2 for the petitioners.

Perused the order dated 24.09.2015 passed by Munsif, Hilsa in Title Suit No.11 of 2011 whereby the learned Court below held that the application filed by the petitioner under Order VII Rule 11(d) of the C.P.C. for rejection of the plaint shall be considered at the time of final hearing of the suit.

The suit has been filed by the plaintiffs-respondents for declaration of the registered sale deed of the year 1939 and 1959 as void, illegal etc. and for setting aside the sale deeds. Application under Order VII Rule 11(d) C.P.C. was filed by the present petitioner praying for rejection of the plaint on the ground that it is barred by law of limitation as provided under Order VII Rule 11(d) C.P.C.

The learned counsel for the petitioners submitted that



before the consolidation authorities, the parties are already fought whereby the petitioner has disclosed about both the sale deeds and, therefore, the plaintiff had knowledge about the existence of the sale deeds long ago as in the year 1984 itself and, therefore, the suit itself is barred by law of limitation. The consolidation proceeding went upto the Director, Consolidation which was decided in 1999 against the plaintiff. This suit has been filed after 12 years. Therefore, according to the learned counsel, the suit is barred under Article 58, 59 of the Limitation Act. The learned counsel relied upon the decision of this Court in the case of **Smt. Vasanti Devi & Anr. v. Yadunandan Mahto, 1998(2) PLJR 568.**

At the time of hearing of this writ application, a copy of the plaint was produced by the learned counsel for the petitioner. From perusal of the copy of the plaint, at paragraph 6, it appears that the plaintiff has pleaded that in fact, on 12.11.2011, the plaintiff came to know about the date of both the sale deeds and thereafter he came to know that the sale deeds are illegal sale deeds and, therefore, the suit has been filed in the year 2011.

Article 59 of the Limitation Act provides as follows:

“(i) To cancel or set aside an instrument or decree or for the rescission of a contract three years period when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded

first become known to him.”

Now, therefore, according to this provision, the period of three years is to be counted from the date when the plaintiff came to know about the existence of the sale deeds. The period cannot be counted from the date of the documents itself. The plaintiff in the plaint has clearly asserted as stated above that he came to know in the year 2011.

Order VII Rule 11(d) C.P.C. provides that the plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. Now, therefore, in view of this provision as contained in Order VII Rule 11(d) C.P.C., the statement of the plaint is only to be seen at the time of consideration of the application under Order VII Rule 11(d) C.P.C.

So far the decision relied upon by the petitioner is concerned, it may be mentioned here that in the decision, it has been held that ordinarily, decision on a matter which involves determination of fact should await the stage of trial. This is the consistent view of the Patna High Court. However, differing to this settled proposition of law, it has been expressed that the question of limitation and resjudicata may be decided as preliminary issue.

In the present case, there is no question of deciding the preliminary issue arises. Here, the application has been filed for

rejection of the plaint.

It is settled principles of law that for the purpose of rejecting the plaint the averment made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety a decree should be passed. For the purpose of deciding the application on merit as to whether the plaint is to be rejected or not only the averment of the plaint can be looked into as required under the said provision.

So far the question regarding the knowledge of the plaintiff about the existence of the sale deeds is concerned, it is an evidence versus evidence. This question cannot be decided as preliminary issue for the purpose of rejecting the plaint and, therefore, the learned Court below has held that the same shall be decided at the final hearing of the suit.

In view of the above settled proposition of law, I find that learned Court below has rightly held that the application shall be considered at the time of final hearing of the suit.

Thus, this writ application has got no merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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