

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1259 of 2016**

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Sunil Kumar Singh

.... Appellant/s

Versus

Abnindra Prasad Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harendra Kumar Tiwary

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

3 13-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 01.07.2016 passed by Subordinate Judge-I, Dalsinghsarai, Samastipur in Title Suit No.99 of 2014 whereby the learned court below rejected the application filed by the petitioner under Order 7 Rule 11 CPC praying for rejection of the plaint after deciding preliminary issue.

It appears that the plaintiff-respondent filed the aforesaid suit for declaration of title and for declaration of the registered gift deed as null and void which was in favour of the defendant-respondent. The petitioner being defendant no.1 filed application under Order 7 Rule 11 CPC praying for deciding preliminary issue to the effect that the plaintiff has no cause of action and the suit is not maintainable as such plaint may be rejected. The court below by the impugned order has rejected the application.



The learned counsel for the petitioner at the time of hearing of this civil miscellaneous application placed the application under Order 7 Rule 11 CPC and submitted that at paragraph 8 specifically the petitioner has stated that the suit property never remained in possession of Harbansh Singh nor the same devolved to the heirs of Harbansh Singh as such no cause to sue accrued to the plaintiff with respect to the deed of gift dated 08.03.2014 and 26.04.2014 to the plaintiff. On the basis of this statement made in paragraph 8 the learned counsel for the petitioner submitted that Order 7 Rule 11 (i) (a) is applicable and on this ground alone the plaint is liable to be rejected.

So far submission of the learned counsel is concerned, it may be mentioned here that the ground that no cause to sue accrued to the plaintiff is not a ground for rejection of the plaint. The plaint can be rejected only if the plaint does not disclose a cause of action. The question which is being raised by the petitioner is dependent on the facts to be proved on the basis of the evidence and, therefore, the same cannot be investigated. For deciding as to whether the plaint discloses the cause of action or not the statement made in the plaint is to be only gone into and for deciding the correctness or otherwise of the statement made in the plaint, the statement made by the petitioner in written statement or



in an application under Order 7 Rule 11 is not required to be gone into. Reference may be made in this regard to the decision of the Supreme Court in the case of **Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another (2004) 9 Supreme Court Case 512** and (2015) 8 Supreme Court Cases 332.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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