

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1162 of 2016**

=====

Ramanand Yadav & Ors

.... Appellant/s

Versus

Pundeo Yadav & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ram Kishun Prasad

For the Respondent/s : Mr.

=====

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

2 24-11-2016

Heard learned counsel for the petitioners.

2. Perused the impugned order dated 18.07.2016 passed by the learned Sub-Judge-1st Bettiah, West Champaran in Partition Suit No. 170 of 2012, whereby the learned court below rejected the application under Order 7 Rule 11 C.P.C. filed by the petitioner.

3. From perusal of the application under Order 7 Rule 11 C.P.C., annexure-2, it appears that a general fact has been stated by the petitioners and prayer has been made for rejection of the plaint. Nowhere the petitioners mentioned that which of the clause contained in Order 7 Rule 11 C.P.C. is applicable. However, at the time of hearing of this civil miscellaneous application, the learned counsel for the petitioners submitted that the suit will be barred by principles of *res judicata* and that there is no cause of action. Therefore, Order 7 Rule 11 Clause (a) (d)



C.P.C. is applicable.

4. So far Order 7 Rule 11(a) C.P.C. is concerned the Hon'ble Supreme Court in the case of ***Liverpool & London S.P. & I Asson. Ltd. Versus M.V. Sea Success I & Anr.*** reported in 2004 (9) SCC 512 has held that 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 its 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 its entirety, a decree would be passed. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. So far Order 7 Rule 11(d) C.P.C. is concerned, it also provides that from perusal of the plaint itself if it is evident that the suit is barred under any law then the plaint can be rejected.

5. The Hon'ble Supreme Court in the case of ***P.V. Guru Raj Reddy & Anr. Vs. P. Neeradha Reddy & Ors.*** reported in ***2015(8) SCC 331*** has held that rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are



stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial.

6. The respondents have filed the present suit for partition. In such circumstances, on the basis of the stand taken by the petitioners either in the written statement or in the application under Order 7 Rule 11 C.P.C., the plaint cannot be rejected. At this stage, the application made by the petitioners or pleaded in the suit are wholly immaterial. Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

brajesh/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)

