

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.770 of 2016**

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Gyan Chandra Mandal

.... Appellant/s

Versus

Smt. Pratima Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Sinha

For the Respondent/s : Mr.

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

3 24-10-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 18.01.2016 passed by Sub Judge II, Munger in Title Suit No.58 of 2006 whereby the Court below rejected the application filed by the defendant-petitioner under Order VII Rule 11 C.P.C. for rejection of the plaint.

It appears that the plaintiff-respondents filed the aforesaid suit for partition. The defendant-petitioner filed application under Order VII Rule 11 C.P.C. which is Annexure 1 to this application. The defendant-petitioner prayed for rejection of the plaint on various grounds mentioned in detail in this application. However, before this court at the time of hearing of this Civil Miscellaneous application, the learned counsel for the petitioner submitted that mainly in fact the application was filed under Order VII Rule 11(a). According to the learned counsel, the

plaintiff has claimed contradictory relief. At one place, he is claiming that the properties have been gifted to the plaintiff and at another place, he is paying for partition of the property, therefore, the plaintiff has got no cause of action and, therefore, the plaint should have been rejected by the trial court.

It may be mentioned here that Order VII Rule 11(a) provides that plaint can be rejected if the plaint does not disclose a cause of action. It may be mentioned here that this is not the ground of the petitioner that from a reading of the plaint, it appears that the plaint does not disclose a cause of action. The case of the petitioner is that there is contradiction in the relief and that the cause of action stated in the plaint does not support the claim of the plaintiff. In my opinion, none of these are the grounds for rejection of the plaint.

So far the question as to whether the plaintiff has got no cause of action, it cannot be decided at the stage of consideration of an application under Order VII Rule 11 C.P.C. because there is vast difference between disclosing cause of action in the plaint and the plaintiff has got no cause of action. The former is to be decided at the time of consideration of an application under Order VII Rule 11(a) C.P.C. whereas the latter is required to be considered at the stage of argument.

Thus, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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