

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4626 of 2016

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Zarina Khatoon

.... Petitioner/s

Versus

Sita Fatima @ Fatima Mansuri & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Manoj

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 04-08-2016

Heard learned counsel Mr. Manoj Kumar Manoj for the
petitioner.

Perused the impugned order. It appears that the plaintiff-respondent filed the suit for declaration of title on the basis of oral gift. Written Statement was filed by the defendant and thereafter Order 7 Rule 11 CPC application has been filed praying for rejection of the plaint on the ground that it does not disclose cause of action and that the relief claimed by the plaintiff is under value. The court below by the impugned order dated 01.06.2016 passed in Title Suit No.430 of 2006 by Subordinate Judge-IV, Muzaffarpur held that the points raised by the petitioner are all questions of fact and, therefore, rejected the application.

Learned counsel for the petitioner submitted that the oral gift, which is being claimed by the plaintiff, is false and in fact prior to the oral gift the donor had already died in the year

1977 whereas the plaintiff is claiming on the basis of oral gift subsequent to that. Learned counsel further submitted that the plaintiff has not properly valued the suit property to avoid payment of court fee.

In view of the submission of learned counsel for the petitioner the question is whether oral gift is correct or not. This question cannot be decided without the evidence. So far the payment of court fee or under value of the suit is concerned, Order 7 Rule 11(b) CPC provides that if the suit is under value and the court directs the plaintiff to correct the valuation within a time to be fixed by the court and if the plaintiff fails to obey the same, the plaint shall be rejected. In the present case, therefore, none of the provision as contained in Order 7 Rule 11 CPC is applicable. Therefore, the learned court below has rightly rejected the application. Thus, I find no reason to interfere with the impugned order.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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