

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.725 of 2016**

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Shaligram Singh

.... Appellant/s

Versus

Rita Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Sumiran Singh

For the Respondent/s : Mr.

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

2 27-09-2016

Heard learned counsel, Mr. Ram Sumiran Singh,
appearing for the petitioner.

2. Perused the impugned order dated 09.03.2016 passed
by the Sub-Judge-VI, Nawadah in Partition Suit No. 101 of 2010,
whereby the learned court below rejected the application filed by
the petitioner for rejection of the plaint under Order 7 Rule 11
C.P.C.

3. It appears that the partition suit was filed by the
plaintiffs claiming 1/3rd share in the suit property and also prayer
has been made for declaration that the gift deed in the year 1990 is
null and void and is not binding on the plaintiffs. The defendant-
petitioner filed written statement and thereafter filed this
application under Order 7 Rule 11 C.P.C. The first ground is that
the suit is barred by law of limitation. The cause of action has not
been disclosed by the plaintiffs. The partition suit is, in fact, a title

suit because the plaintiffs are challenging the mutation order and the gift deed executed by the plaintiffs. The plaintiffs never prayed for recovery of possession, as such, the suit cannot proceed and by the impugned order, the court below has rejected the application.

4. So far the ground of limitation is concerned, except this statement that the suit is barred by law of limitation, there is no specification as to how and under which article, the suit is barred as the plaintiff are praying for partition for 1/3rd share. So far the gift deed is of the year 1990 is concerned also, it may be mentioned here that the question of limitation is not a pure question of law. The cause of action, according to the Article 59 of the Limitation Act, will arise on the date of the knowledge of the plaintiffs. Therefore, for applying Article 59, the date of knowledge has to be ascertained.

5. So far the ground that the plaintiffs have not disclosed the date of cause of action, specifically, is concerned, it may be mentioned here that this is not a ground for rejection of the plaint. The plaint can be rejected if from the reading of the plaint, it does not appear a cause of action. From perusal of the plaint, it appears that the plaintiff has disclosed the fact entitling her 1/3rd share. Therefore, the bundle of facts, entitling her to claim 1/3rd share is there. The question raised by the petitioner is that there

had already been previous partition. So far this question is concerned, it is a pure question of fact and is dependant on the evidences that may be produced by the parties. As such, it cannot be decided on mere statement made in application under Order 7 Rule 11 C.P.C.

6. So far the submission of the learned counsel for the petitioner that in fact, the suit is a title suit, which has been filed as partition suit, is concerned, it may be mentioned here that this submission of the learned counsel for the petitioner is nothing but mere a statement only. The nature of the suit should be ascertained from the relief claimed in the suit and not as per the interpretation of the defendant. No other issue is raised. Therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. As such, this civil miscellaneous application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)