

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.661 of 2016**

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Uday Shankar & Anr

.... Appellant/s

Versus

Gita Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharmesh Kumar Shrivastava

For the Respondent/s : Mr.

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

2 29-08-2016 Heard the learned counsel, Mr. R. S. Ganguly, for the
petitioner.

Perused the order dated 23.6.2016 passed by Sub Judge Ist,
Patna in Title Partition Suit No.563 of 2012.

It appears that the plaintiff respondent filed the aforesaid
partition suit claiming partition of the suit property. The
defendant filed written statement and thereafter filed an
application under Order 7 Rule 11 CPC praying for rejection of
the plaint on the ground that the plaintiff's suit is not maintainable
and is barred by law.

According to the learned counsel for the petitioner, part of
the suit property are the ancestral property and, therefore, for that
part, the petitioner has got no objection, if partition is made but so
far another part is concerned, properties are the self acquired
property of the petitioner being purchased by them by registered

sale deeds and, therefore, the said property cannot be partitioned in the partition suit as the plaintiff has no title to the property. In such view of the matter, the learned Court below should have dismissed the suit but the application filed by the petitioner has been rejected.

From perusal of the impugned order, it appears that the other ground taken by the petitioner is that the plaint is insufficiently stamped.

From perusal of the impugned order, it further appears that the other ground is that the plaintiff has no cause of action. The learned counsel at the time of hearing of this application submitted that the suit is barred by estoppel and that according to Order 8 Rule 2 CPC clear pleading has been made in the written statement but the Court below did not consider all these facts and rejected the application filed by the petitioner.

So far the cause of action is concerned, it is admitted by the petitioner himself that the suit is partition suit. Therefore, the cause of action is recurring cause of action. Moreover according to the petitioner, the plaintiff has got no cause of action. In my opinion, on this ground the plaint cannot be rejected as Order 7 Rule 11 Clause (a) provides that if the plaint does not disclose a cause of action then the plaint is liable to be rejected. So far

the objection of the petitioner is that the part of the property are the self acquired property of the petitioner is concerned, it may be stated that this is the question of fact and, therefore, it can only be decided on the basis of the evidence that may be recorded and, therefore, under Order 7 Rule 11, this question cannot be decided.

So far Order VIII Rule 2 is concerned, it has got nothing to do while consider the application under Order VII Rule 11 CPC. In my opinion, therefore, the learned Court below has rightly rejected the application filed by the petitioner. Thus, there is no jurisdictional error in the impugned order and thus this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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