

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7454 of 2016

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Sukdeo Mandal & Anr

.... Petitioner/s

Versus

Heeraman Mandal & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikram Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2 29-07-2016 Heard the learned counsel, Mr. Vikram Singh, for the petitioner.

It appears that the suit was filed by the plaintiff respondent for declaration of title to the suit property and for declaration that the decree passed in Title Suit No.325 of 1984 is illegal, void and the same was obtained fraudulently in absence of the plaintiff. The petitioner herein who is defendant filed an application under Order 7 Rule 11 (a) CPC praying for rejection of the plaint on the ground that the plaint does not disclose cause of action. In the plaint nowhere the particulars of fraud has been pleaded by the plaintiff. The Court below by the order dated 8.10.2015 rejected the said application. The petitioner thereafter filed review application. The Court below by the impugned order 11.12.2015 passed in Title Suit No.420 of 2006 by Sub Judge XII Bhagalpur rejected the said review application.

The plaint has been annexed in the writ application as

Annexure '1'.

Perused the plaint. It appears that the plaintiff has filed the suit for declaration of title on the ground of adverse possession against the defendant petitioner on the ground that they are continuing in possession more than 12 years to the knowledge of the defendants denying their title. The plaintiff also prayed that the decree passed in the earlier suit No.325 of 1984 be declared as fraudulent as the plaintiffs were not made party in the said suit. For getting the aforesaid relief, the plaintiffs have narrated these facts.

The Hon'ble Supreme Court in the case of *Liverpool & London S.P. & I Association Ltd. Vs. M.V.Sea Success I 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 their entirety must be held to be correct. The test is as to whether if the averment made in the plaint are taken to be correct in their 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 inquiry into the doubtful or complicated question of law or fact. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeeded is no ground for striking it**

out.’

In the present case the learned counsel for the petitioner relied upon a decision of the Hon’ble Supreme Court reported in *(2014) 1 SCC 669* and submitted that the plaintiff cannot claim title on the basis of adverse possession. So far this decision is concerned, the suit was filed by the plaintiff who was a proposed vendee of the respondent. Therefore, the decision will not apply in the present case. The suit has been filed for declaration of right of the plaintiff. Whether he will succeed or not cannot be the ground for rejection of the plaint under Order 7 Rule 11 CPC. So far fraud is concerned, the learned counsel submitted that there is no particulars of fraud as required under Order 6 Rule 4 CPC, it may be mentioned here that it is rules of pleading and, therefore, also on that ground, the plaint cannot be rejected. Therefore, the learned Court below has rightly passed the impugned order. In my opinion, therefore, it is not a case for interference in supervisory jurisdiction.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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