

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.756 of 2016**

=====

Bibi Noor Fatma @ Noor Fatma

.... Appellant/s

Versus

Bibi Sultana Begum

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Mohammed Abu Haidar

For the Respondent/s : Mr.

=====

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

3 20-10-2016

Heard the learned counsel, Mr. Abu Haidar for the
petitioner.

Perused the impugned order dated 12.04.2016 passed
by the learned Sub Judge XV, Bhagalpur in Title Suit No.722 of
2014 whereby the learned Sub Judge has rejected the application
filed by the defendant-petitioner under Order VII Rule 11(a)&(d).

It appears that partition suit was filed by the plaintiff-
respondent. The defendant appeared and filed contesting written
statement. Thereafter, the petitioner filed an application under
Order VII Rule 11(a) and (d) alleging that the plaintiff has got no
cause of action and that the suit is barred by law of limitation
because the suit property has been recorded in the name of
husband of the petitioner in the year 1985 and no declaration has
been sought for, for this long period, therefore, the suit is barred
by law of limitation.



The learned counsel for the petitioner submitted that at paragraph 20 of the written statement, there is specific averment made by the defendant-petitioner to the effect that the plaintiff has got no cause of action. So far the limitation is concerned, according to the learned counsel, the limitation will start from the date of publication of the survey khatian i.e. revenue record of right in the year 1985 and the limitation prescribed for declaration will be governed by residuary Article 113 of the Limitation Act.

So far order VII Rule 11(a) is concerned, it may be mentioned here that the plaint can be rejected on the ground if the plaint does not disclose a cause of action. The statement made in paragraph 20 of the written statement is that the plaintiff has got no cause of action. The statement made in paragraph 20 cannot be said to be the ground for rejection of the plaint. Whether the plaintiff has got cause of action or not can only be decided at the time of judgment of the suit.

So far the limitation matter is concerned, according to the defendant-petitioner, the property has been recorded in the revenue record of right in the year 1985 in the name of the husband, therefore, the suit is barred. It is settled principles of law that revenue record of right neither create title nor extinguish title.

The Hon'ble Supreme Court in the case of **Daya Singh**

and another v. Gurdev Singh(Dead) by LRS. and others,
(2010) 2 Supreme Court Cases 194 has held that right to sue
accrues when there is a clear and unequivocal threat to infringe a
right. Mere adverse entry in revenue records will not give rise to
cause of action.

In my opinion, therefore, the grounds raised by the
petitioner are devoid of any merit and, therefore, I find no reason
to interfere with the impugned order.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--