

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1507 of 2016

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1. Lalit Narayan Mishra son of Sri Uma Shankar Mishra resident of mohalla Bajaj Patti, Madhuban Chawani Chowk, P.S. Motihari Town, District - East Champaran.

.... Appellant/s

Versus

1. Chitranjan Mukherjee son of Late Sidheshwar Mukherjee resident of 32 Rastra Guru Revenue Kolkata, West Bengal.
2. Smt. Swastika Banerjee wife of Lae Sunil Banerjee, daughter of Late Sidheshwar Mukherjee resident of 25A, Rajendra Lila Street, Kolkata 700006, West Bengal.
3. Smt. Priti Kumari Mishra wife of Lalit Narayan Mishra resident of mohalla Bajaj Patti, Madhuban Chawani Chowk, P.S. Motihari Town, District - East Champaran.
4. Smt. Urmkila Devi wife of Uma Shankar Mishra resident of mohalla Bajaj Patti, Madhuban Chawani Chowk, P.S. Motihari Town, District - East Champaran.
5. Uma Shankar Mishra son of Late Amod Mishra resident of mohalla Bajaj Patti, Madhuban Chawani Chowk, P.S. Motihari Town, District - East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 22-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 25.11.2016 passed by the learned Sub- Judge 14th, Motihari, East Champaran in T.S.No.820 of 2015 whereby the learned court below rejected the application filed by the petitioner under Order 7, Rule 11(d) CPC praying for rejection of the plaint.

The suit was filed by the plaintiff for declaration that



the sale deeds of the years 2003 and 2009 are void ab initio. In para 5 of the plaint it is clearly mentioned by the plaintiff that the knowledge came to the plaintiff in 2015 and the suit has been filed in the year 2015 itself. By the impugned order the learned court below rejected the application on the ground that the limitation will start from the date of knowledge. The Hon'ble Supreme Court in the case of P.V.Guru –v- Neeradha Reddy, (2015) 8 Supreme Court Cases 331 in para 5 has held that rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected.

It is the submission of the plaintiff that the plaintiff



in the present case, came to know about these two sale deeds of the years 2003 and 2009 in 2015. Therefore, in view of Section 58 of the Limitation Act the right to sue accrue to the plaintiff only when the plaintiff came to know the existence of the two sale deeds and admittedly the suit has been filed within the time.

Thus, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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