

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.121 of 2016

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Anwari Bibi

.... Petitioner/s

Versus

Khairatan Bibi & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kishore Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

8 14-09-2016

Heard learned counsel, Mr. Kaushal Kishore Mishra,
appearing for the petitioner and learned counsel, Mr. Nagendra
Rai, appearing for the respondents.

2. This civil revision application has been filed by
defendant No.2-petitioner under Section 115 of the Code of Civil
Procedure against the order dated 10.03.2016 passed by the Sub-
Judge-Ist, Chapra in T.S. No. 17 of 2015, whereby the learned
court below rejected the application filed by the present petitioner
under Order VII Rule 11(d) C.P.C.

3. It appears that the plaintiffs-respondents filed the
aforesaid suit claiming partition of 1/3rd share in the suit property.
Admittedly, defendant No.2, the plaintiff and respondent No.2 are
three own sisters. The suit has been filed for partition to the extent
of 1/3rd share in the property of their father. It is alleged that the
parties are joint and there had been no partition in the property.

4. The written statement has been filed by the defendant-petitioner contesting the suit alleging that there had already been partition between the parties and according to the partition, parties are in separate possession and prior to that mother had gifted the property orally to the petitioner. Therefore, there is no question of partition, again, arises.

5. Thereafter, the petitioner has filed an application under Order VII Rule 11(d) C.P.C. praying for rejection of the plaint on the ground, mentioned in the application, which is annexure-4 to this civil revision application. The first ground for rejection of the plaint, according to this application under Order VII Rule 11(d) C.P.C. is that the plaint does not disclose the cause of action and the second ground for rejection of plaint is that the suit is barred by law. At the time of hearing of this application, the learned counsel, Mr. Mishra for the petitioner submitted that the suit is barred under Section 34 of the Specific Relief Act, barred by law of limitation, barred by acquiescence and etc. etc. The learned counsel in support of his contentions relied upon various decision of either this Court or the Supreme Court, such as; (1) *AIR 1972 SC 1685*; (2) *AIR 2010 Patna 189*; (3) *2010 (1) PLJR 567*; (4) *2010 (1) PLJR 569*; (5) *AIR 1998 SC 634*; (6) *2002 (4) PLJR 90*; (7) *2015 (4) SCC 371*; (8) *AIR 1991 Patna 1*; (9) *Air*

2014 SC 937; (10) 1980 BLJ 429; (11) AIR 1977 SC 2421; (12) AIR 1973 SC 171; (13) AIR 1968 SC 808; (14) AIR 1987 SC 2328; (15) 1998 (9) SCC 719; (16) AIR 1927 Patna 286; (17) 1994 (1) PLJR 39 SC equal to AIR 1994 SC 853; (18) 1973 (2) SCC 60.

6. In reply to the submission of the learned counsel for the petitioner, the learned counsel for the respondents submitted that none of the decisions relied upon by the petitioner is applicable in the present case as the suit is a simple suit for partition and at the time of deciding an application under Order 7 Rule 11(d) C.P.C., the only pleading in the plaint is to be gone into and not the statement in the written statement nor in the application under Order 7 Rule 11(d) C.P.C. is required to be gone into. According to the learned counsel for the respondents, the learned court below has rightly rejected the application.

7. Perused the plaint, which is annexure-2. From perusal of the plaint, it appears that it is a simple suit for partition. The bundle of facts, entitling the plaintiff to claim partition has been stated in the plaint. So far the application under Order 7 Rule 11(d) C.P.C., which is annexure-4, is concerned, it may be stated that the first ground is that the plaint does not disclose cause of action. The second ground is that the suit is barred by law i.e. Order 7 Rule 11(d) C.P.C. There is no specification in the

application as to under which provision of law the suit is barred. Except the statement that the suit is barred by law, nothing is detailed therein.

8. Order VII Rule 11(d) C.P.C. provides that the plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. As stated above, except this statement that the suit is barred, which is raised by the defendant, nothing is there to show that under which provision of law, the partition suit is barred, particularly, when the parties are own sisters and the plaintiff has claimed 1/3rd share in the suit property.

9. The Hon'ble Supreme Court in the case of *Liverpool & London S.P. & I Asson. Vs. M.V. Sea Success I & Anr.* reported in **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 averments 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 enquiry into doubtful or complicated questions of law or fact. By the statute, the jurisdiction of the court is



restricted to ascertaining whether on the allegations a cause of action is shown. 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 succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.

10. In the present case, as stated above, the bundle of facts has been disclosed by the plaintiff in the plaint and then she is claiming 1/3rd share in the suit property. Now, therefore, whatever the stand taken by the defendant either in the written statement or in the application under Order 7 Rule 11(d) C.P.C. is not material at all.

11. The Hon'ble Supreme Court in the case of ***P.V. Guru Raj Reddy & Anr. vs. P. Neeradha Reddy & Ors.*** reported in ***2015 (8) SC 331*** has held that rejection of the plaint under Order VII rule 11 of the 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 VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has 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 VII 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. In all other situations, the claims will have to be adjudicated in the course of the trial.

12. In view of all these settled proposition of law, as stated above, the defence cannot be looked into. Now, therefore, the argument of the learned counsel for the petitioner that the suit is barred by Section 34 of the Specific Relief Act, acquiescence, barred by law of limitation, waiver, fraudulent and that there had already been partition, all are questions of fact that can only be decided after the parties adduced their respective evidence and for deciding an application under Order VII Rule 11(d) C.P.C., these questions are foreign questions for decision. Therefore, all the decisions relied upon by the learned counsel for the petitioner on the points that the suit is barred by Section 34 of the Specific Relief Act, fraud, etc. etc., as argued by the learned counsel for the petitioner, are not applicable in the present case. In the facts and circumstances of the case, I, therefore, find that the order

impugned in this civil revision application cannot be interfered with in exercise of jurisdiction under Section 115 of the Code of Civil Procedure. Thus, this civil revision application is dismissed.

Brajesh/-A.F.R.

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(Mungeshwar Sahoo, J.)