

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.817 of 2016**

=====

Sima Devi & Anr

.... Appellant/s

Versus

Stya Bhama Kumari Gupta @ Stya Bhama Kumari & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Pandit Jee Pandey

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 03-10-2016

Heard the learned counsel, Mr. Pandit Jee Pandey for the
petitioners.

Perused the impugned order dated 03.05.2016 passed by
learned Munsif, Danapur in Title Suit No.6 of 2011 whereby the
learned Court below rejected the application filed by the
defendant-petitioner under Order 7 Rule 11 C.P.C.

The learned counsel for the petitioners submitted that the
plaintiff has got no cause of action and that the suit is barred by
law but the learned Court below rejected the same by the
impugned order. According to the learned counsel, the plaintiffs
are the purchasers from the judgment debtor in Title Suit No.143
of 1982. The plaintiffs had knowledge about the said suit wherein
the vendor of the plaintiffs fought upto the second appellate court
but lost and thereafter this suit has been filed by the purchasers.

Perused the application filed by the petitioners under
Order 7 Rule 11 C.P.C., which is Annexure 2 to this civil

miscellaneous application.

From perusal of the application, it appears that there is no averments regarding the cause of action as provided under Order 7 Rule 11(a) C.P.C. or the suit is barred under any law as provided under Order 7 Rule 11(d) C.P.C. From perusal of the impugned order, it appears that argument was advanced before the Court below to the effect that plaintiff has got no cause of action to file the suit. In my opinion, this is not a ground for rejection of the plaint under Order 7 Rule 11(a) which specifically provides that if the plaint does not disclose a cause of action, the plaint is to be rejected.

So far the question of bar under any law is concerned, except the merit of the case that earlier suit was decided by the High Court in Second Appeal and that the plaintiffs had the knowledge and that they are the purchasers, in my opinion, this is not a question of law. The same can only be decided on the basis of the evidence that may be brought on record by the parties. Therefore, this is also not a case under Order 7 Rule 11(d) C.P.C..

Thus, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed.

Saurabh/-

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

(Mungeshwar Sahoo, J)