

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13393 of 2014

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1. Ramayan Singh, Son of Late Ram Darash Rai, Resident of Village- Civil Line,
Police Station- Buxar (T), District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Buxar
2. The Sub-Divisional Officer, Buxar, District- Buxar
3. The Circle Officer, Buxar Circle, District- Buxar
4. Sita Devi, Wife of Sri Anchal Kumar Pandey, Resident of village- Hari-
kishunpur, Post Office- Dalsagar, Police Station- Buxar (Ind.), District- Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Kamal Deo Sharma

For the Respondent/s : Mr. SC14 DR.ANSHUMAN

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-09-2016

Heard learned counsel for the petitioner.

By the impugned order the learned court below has
turned down the prayer on behalf on the defendant-petitioner for
rejection of the plaint.

From perusal of the averments made in the plaint as
annexed with the application, it is apparent that the suit has been
filed by the plaintiff for declaration that the order passed under
Sections 145 and 146 of the Cr.P.C in Case No. 105/M/2011 is
illegal and void and would not be binding upon the land of the



plaintiff as mentioned in the schedule of the plaint. The defendant appeared and filed the petition praying for rejection of the plaint on the ground that earlier to this suit another suit was filed by the plaintiff for right title and interest over the suit land and therefore, the relief prayed in the present writ application is barred by the principles of *res judicata*. The learned court below has not accepted the prayer of the defendant and has dismissed the petition.

From the perusal of the materials on record and considering the submissions on behalf of the petitioner, it is evident that the suit has been filed with the reliefs, as prayed, as mentioned above, which is demonstrably confined to the order passed in a proceeding under Sections 145 and 146 of the Cr.P.C. From the averments made in the plaint, it is also evident that the plaintiff has accepted to have filed earlier suit and thereafter first appeal and has also further stated that the order in the proceeding under Sections 145 and 146 of the Cr.P.C has been passed with regard to her land when she was not a party. It has also been further averred that the criminal revision filed by the plaintiff against the order passed under Section 145 Cr.P.C was also dismissed as not pressed. The ambit and scope of the jurisdiction of a court for rejection of a plaint under Order 7 Rule 11 CPC is no longer *res integra*. In the present case the averments made in the plaint when taken to be fully correct



will not result in rejection of the plaint. The consideration of the defence as raised by the defendants cannot be a ground for rejection of the plaint under Order 7 rule 11 though it may give a right to the defendant under Order 14 Rule 2 C.P.C. The learned court below has, therefore, committed no error of jurisdiction and material irregularity in passing the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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