

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14714 of 2013

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Naresh Singh Son Of Late Mahadeo Singh Resident Of Village- Dhamua, P.S.-
Barachatti, District- Gaya.

.... Petitioner/s

Versus

Nagendra Singh Son Of Chandrika Singh Resident Of Village- Dhamua, P.S.-
Barachatti, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-12-2016

Heard learned counsel for the petitioner.

The legal acceptability of the impugned order by which the learned court below has turned down the prayer made on behalf of the defendant no. 1 for rejection of the plaint under Order 7 Rule 11 C.P.C. has been questioned in this application under Article 227 of the Constitution of India.

Learned counsel for the petitioner has submitted that there had already been partition in between the parties with regard to the suit property and the said fact has been mentioned in several paragraph of the written statement. It has also been pointed out that the decree passed in the aforesaid suit supports the contention of the petitioner that there had been previous partition in between the parties.



From the perusal of the impugned order, it transpires that the learned court below, after considering the facts and circumstances as well as pleadings of the parties, has come to the conclusion that the plaint cannot be rejected. Even otherwise also, it is well settled that the plea raised in the written statement cannot be a ground for rejection of the plaint as the said plea is still to be established during the course of trial on the basis of evidence. This Court, therefore, is not inclined to interfere in the impugned order.

The application is accordingly, dismissed.

However, the learned court below is directed to expedite the hearing of the suit.

(V. Nath, J)

Devendra/-

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