

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.173 of 2016

IN

Civil Writ Jurisdiction Case No. 2699 of 2016

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1. Srimati Girija Devi, Wife of Madhumangal Pandey, Resident of Village-Nawadih, P.S.-Nokha, District-Rohtas.
 2. Binod Kumar Singh.
 3. Arbind Kumar Singh.
 4. Arun Kumar Singh.
- 2 to 4 all are the sons of Late Dwarika Prasad Singh.
5. Manish Kumar Son of Binod Kumar Singh.
 6. Mukesh Kumar.
 7. Bir Bhagat Singh.
- Both are the sons of Arun Kumar Singh.
All are the resident of village and Post –Baraon, P.S.-Nokha, District-Rohtas.

.... Petitioners

Versus

Deodat Upadhya, Son of Late Jagbharan Upadhya, Resident of Village & Post-Baraon, P.S.-Nokha, District-Rohtas. Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Dhaneshwar prasad Gupta

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-08-2017

Heard the learned counsel for the parties.

After considering the submissions, the delay in filing this revision application is condoned.

The interlocutory application is, accordingly, allowed.

Heard the learned counsel for the parties on merits of this revision application.

Learned counsel for the petitioners has submitted that the learned court below has committed error of jurisdiction in rejecting the prayer of the defendant-petitioner for



rejection of plaint under the provisions of Order 7 Rule 11 C.P.C. It has been contended that a suit had earlier been filed by the person who was natural son of the present plaintiff but was given in adoption and the said suit had abated after the death of the said son in accident. It has been further pointed out that the mother of the plaintiff of that earlier suit filed a miscellaneous case for setting aside the abatement, but subsequently, the miscellaneous case was withdrawn. On this base, it has been propounded that the present plaintiff who is father of the plaintiff of the earlier suit cannot maintain the suit as he has no right, title and possession over the suit property.

After considering the submissions and the materials on record, it is evident that the present plaintiff was not a party in the earlier suit. The issues that the present plaintiff has no right, title or possession in the suit cannot be a ground for rejection of the plaint. The learned court below has rightly come to the conclusion that the issues/objections raised by the defendants, as the basis for rejection of plaint under Order 6 Rule 17, cannot be determined at that stage. This Court comes to the conclusion that the learned court below has not committed error of jurisdiction or illegality in passing the impugned order.

This revision application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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