

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.159 of 2016

IN

Civil Writ Jurisdiction Case No. 320 of 2016

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Shyam Narain Singh, Son of Late Saryug Singh, Resident of Village & P.O.-
Govindchak, P.S.-Sonepur, District-Saran.

.... Defendant/Petitioner.

Versus

1. Mrigendra Singh, S/o Late Jangal Singh.
2. Dharendra Singh, S/o Chandrama Kuer.
3. Khusbu Kunwar, Widow of Late Ramendra Singh.
4. Ripuj Kumar, Minor S/o Late Ramendra Singh.
5. Manish Singh, S/o Late Chandrama Singh.
6. Babi Devi.
7. Richa Devi.
D/o Late Jangal Singh.
8. Lali Devi, D/o Late Jangal Singh.
9. Shashi Bhushan Singh, Son of Late Mangal Singh.
10. Mira Devi, D/o Mangal Singh.
11. Ramji Singh, S/o Late Bindeshwari Singh.
12. Lakshman Singh.
13. Bharat Singh.
14. Lal Singh.
15. Nanda Singh.
16. Baban Singh.
All Sons of Late Bindeshwari Singh.
17. Jagpato Devi, D/o Late Bindeshwari Singh.
18. Chandrashekhar Singh S/o Late Rammohar Singh.
19. Manoj Singh.
20. Pramod Singh.
Son of Chandrashekhar Singh.
21. Madhuri Devi.
22. Renu Devi.
23. Saroj Devi.
D/o Chandrashekhar Singh.
24. Ramabati Devi, D/o Late Bindeshwari Singh.
25. Brijnandan Singh.
26. Bipin Singh.
S/o Late Kedar Singh.
27. Arun Singh, Son of Late Birbahadur Singh.
28. Renu Devi.
29. Sunita Devi.
D/o Late Bir Bahadur Singh.
30. Chinta Devi.
31. Shakuntala Devi.
D/o Late Kedar Singh.
All are Residents of Village-Dholrahi Kaithal, P.S.- Amnour, present residing at
Govindchak, P.S.-Govindchak, P.S.-Sonepur, District-Saran.
32. Kunj Bihari Singh.
33. Bitun Singh.



Son of Late Ramji Singh.

Both are Resident & Post-Nawada, P.S.- Udwantnagar, District-Ara.

34. Nirmala Devi, W/o Dwarika Singh, Resident of Village-Bhabhangawa, P.O.-
Dumri, P.S.-Sonpur, District-Saran.
35. Shail Kumari, W/o Sriram Singh, Resident of Village & P.O.-Dulahpur, P.S.-
Simri, District-Buxar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhakar Nath Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-02-2017

Heard Mr. Nagendra Rai, learned counsel
appearing on behalf of the petitioner on the merits of the civil
revision application alongwith the interlocutory application (I.A.No.
270/2017) which has been filed for stay of the further proceeding of
the T.S.No.434/2008 pending before the learned Sub Judge II, Saran
Chapra.

This revision application has been filed against
the impugned order by which the learned court below has turned
down the prayer on behalf of the defendant for rejection of plaint
under Order 7 Rule 11 C.P.C.

The copy of the plaint of T.S.No. 434/2008 has
been brought on record as Annexure-1 to the revision application
from which it transpires that the suit has been filed by the plaintiff for
declaration that the judgment and decree passed in T.S.No. 16/1981 is
collusive, illegal, ineffective and baseless and fit to be set aside. There



is no dispute on behalf of the petitioner that the T.S.No. 16/1981 was filed by the petitioner for declaration of title over the suit property given therein. From the glimpses of facts as disclosed by the learned counsel for the petitioner, it is transparent that the suit property originally belonged to one Talwar Singh who had one son Bishwanath Singh and a daughter Siromani Devi. The plaintiffs have claimed the suit property through gift from the widow daughter-in-law of Bishwanath Singh whereas the defendants have asserted their claim of title by transfer from the maternal grand daughter of Talwar Singh namely Derpa Devi claiming that the suit property was gifted to Derpa Devi by her mother and Derpa Devi had thus derived title over the same from her mother Siromani Devi. It has also been submitted by Mr.Rai, learned counsel for the petitioner that earlier a partition suit was filed by Derpa Devi (vendor of the defendant) in the year 1958 in which the preliminary decree and final decree were passed.

The prayer for rejection of the plaint by the defendant has been based upon firstly on the ground that the suit was barred under Section 34 of the Specific Relief Act, and the other ground as appearing from the submissions by the learned counsel for the petitioner is that the plaintiff has no cause of action for the suit.

After considering the submissions and perusal



of the impugned order as well as the materials on record, this Court is not persuaded to hold that the plaint could have been rejected under Order 7 Rule 11 C.P.C. on the two grounds as raised by the defendants. It is well settled that the jurisdiction under Order 7 Rule 11 C.P.C. can be exercised only in cases where from a bare reading of the plaint the suit will appear to definitely fail. It is not in dispute and also observed by the learned court below as well that the evidence on behalf of the plaintiff is complete and the suit has been fixed for evidence of the defendant. This Court does not find that the learned court below has committed any error of jurisdiction or material irregularity in passing the impugned order.

The revision application is, accordingly, dismissed.

It is, however, clarified that any observation made in this order shall not prejudice the case of either of the parties in the suit with regard to their respective claims which shall be decided in the suit in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2017
Transmission Date	

