

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21225 of 2012

- =====
1. Jai Ram Singh S/O Late Phudan Singh.
 2. Sanjay Singh S/O Shri Jai Ram Singh both R/O Village- Mithappa, P.S.- Silab,
District- Nalanda.

.... Petitioner/s

Versus

Kamlesh Singh S/O Late Arjun Singh R/O Village- Mithappa, P.S.- Silab, Distt.-
Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Narayan Jha, Adv.

For the Respondent/s : Mr. K.P. Gupta-SC-16

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-02-2017

At the out set, learned counsel for the petitioners has
prayed for and is allowed to delete the name of the respondent no. 1
and 2 from the main application.

Heard Mr. Bhupendra Narayan Sinha, learned counsel
appearing on behalf of the petitioners.

The legal sustainability of the impugned order by which
the learned court below has turned down the prayer of the defendant-
petitioners 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 petitioners has submitted that
though the plea for rejection of the plaint on the ground of bar of res



judicata and limitation was raised but at present the petitioners are not pressing the said plea on the ground of res judicata. It has been further submitted that this application is being pressed with regard to the prayer for rejection of the plaint on the ground of limitation alone. It has been further canvassed that the learned court below has not recorded a finding that the suit is not barred by limitation and as such the impugned order is vulnerable.

After considering the submissions and perusal of the impugned order, it is manifest that the petitioners' plea of bar of limitation has been raised in the context that since the plaintiff has sought the relief against the gift deed dated 19.08.1998, the suit filed in the 2010 is barred by limitation. During the course of submission, learned counsel for the petitioners has placed the averments made in the plaint wherein the explanation in this regard has been furnished by the plaintiff asserting the knowledge of the gift deed for the first time during the mutation proceeding between the parties in the year 2010. It is well settled that at the time of considering the prayer for rejection of the plaint the averments made in the plaint are only to be considered without any addition or subtraction. In this backdrop, if the explanation furnished by the plaintiff is accepted to be valid, the suit filed by the plaintiff in the year 2010 is clearly not barred by limitation. The submission on behalf of the petitioners that the learned



court below has not recorded a finding that the suit is not barred by limitation is clearly not tenable in view of the fact that at the stage of Order 7 Rule 11 C.P.C. no such finding could have been recorded as such a finding could have been recorded only after considering the pleadings and evidence of the parties adduced before the court.

This application, sans merit, is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.02.2017
Transmission Date	

