

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.276 of 2017**

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1. Mosmat Krishna Devi W/o late Parmeshwar Sah, Resident of Village/Mohalla-Mundichak, Janki Prasad Lane, Police Station- Tilkamanjhi, District-Bhagalpur.
 2. Bijay Kumar Sah, S/o Late Parmeshwar Sah, Resident of Village/Mohalla-Mundichak, Janki Prasad Lane, Police Station-Tilkamanjhi, District-Bhagalpur.
 3. Tara Devi, D/o Late Parmeshwar Sah, Wife of Prakash Sah, Resident of Mohalla-Warsliganj, Police Station-Babarganj (Mojahidpur), District-Bhagalpur.

.... Appellant/s

Versus

1. Chote Lal Sah S/o Late Munna Sah Resident of Mohalla-Warsaliganj Mirzanhat, Police Station-Mojahidpur, District-Bhagalpur and Presently residing at Janaki Prasad Lane, Mundichak, Police Station-Tilkamanjhi, District-Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Chandra

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 16-02-2017 Heard the learned counsel for the petitioner.

Perused the impugned order dated 03.01.2017 passed by Sub-Judge II, Bhagalpur in Title Suit No. 365/14 whereby the learned Sub-Judge has rejected the application filed by the petitioner under Order VII Rule 11(d) of the Code of Civil Procedure and refused to reject the plaint.

The plaintiff-respondent filed the aforesaid suit for declaration that the plaintiff is adopted son of Parmeshwar Sah and has legal right and title in the suit land and after declaration



the partition of the suit property be affected.

The defendant-petitioner filed application under Order VII Rule 11(d) CPC praying for rejection of the plaint on the ground that the suit is barred under Section 6 of the Hindu Adoption and Maintenance Act.

The court below by the impugned order has rejected this application.

It appears that the court below found that some different papers have been produced by the plaintiff to show that he is the son of Parmeshwar Sah and in absence of registered deed of adoption on the basis of evidence, the fact of adoption can be decided. The only objection of the learned counsel for the petitioner is that no date has been mentioned in the plaint nor the plaintiff pleaded regarding giving and taking ceremony which is necessary for the valid adoption. In such view of the matter, in absence of the above pleading the plaint is liable to be rejected. So far, this ground raised by the petitioner is concerned, this is not a ground for rejection of a plaint under Order VII Rule 11(d) CPC. The suit filed by the plaintiff is not barred by the provision as contained in Section 6 of the Adoption Act referred to above.

The decision relied upon by the learned counsel for the petitioner 2003(1) Supreme Court cases 557, 2005(8) Supreme



Court cases Page 67, 2006 (8) SCC page 367, 2011 (2) SCC Page 298 are not applicable in the facts and circumstances of the case.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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