

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.18 of 2016

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Shailendra Prasad Singh @ Shailendra Kumar Singh son of late Sidheshwari Prasad Singh, resident of Mohalla-Rajendra Nagar Road No. 1 P.O. and P.S. Kadamkuan, District-Patna.

.... Petitioner/s

Versus

1. Chandrika Yadav.
2. Supan Yadav, both sons of late Shiv Yadav resident of village-Sorampur, P.S. Dulhin Bazar, District-Patna.
3. Narendra Prasad Singh son of Late Sidheshwari Prasad Singh, resident of Mohalla-Rajendra Nagar Road No. 1 P.O. and P.S. Kadamkuan, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manojeshwar Prasad Sinha, Sr. Adv.
Mr. Krishna Kishore Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-04-2017

Heard Mr. Manojeshwar Prasad Sinha, learned senior counsel for the petitioner and learned counsel for the opposite parties.

The petitioner has challenged the impugned order by which the learned court below has rejected the petition filed by the defendant-petitioner under Order VII Rule 11 (d) C.P.C. praying for rejection of the plaint.

After considering the submissions on behalf of the parties in I.A. No. 1526 of 2016, this Court finds that the petitioner has succeeded in establishing sufficient cause for not filing the present



revision application within time.

Accordingly, the said interlocutory application is allowed and the delay in filing the revision application is condoned.

The plaintiff opposite party 1st set has filed the suit for specific performance of contract for sale against the defendant-petitioner. At the stage when the evidence on behalf of the defendants was being adduced, the defendants filed a petition under Order VII Rule 11(d) C.P.C. praying for rejection of the plaint on the ground that the suit was barred by limitation. It was the case of the defendants as made out in the petition (Annexure-1) under Order VII Rule 11 (d) C.P.C. that the period of limitation for filing the suit for specific performance of contract was three years from the date of the contract for sale. It was further averred that the plaintiffs had stated to have paid the entire consideration money from 1991 up till 1998 and to have sent the legal notices dated 19.10.2006 and 04.12.2006 but the suit had been filed on 24.04.2009 after expiry of 10 years 10 months from the date of the last payment. Besides the bar of limitation, the defendants also raised the plea of bar and various other provision of law as laid down under S.R. Act, law of limitation and bar for non-joinder and miss-joinder of parties. The rejoinder was filed on behalf of the plaintiff disputing the legal tenability of the prayer as made on behalf of the defendants.



Learned senior counsel appearing on behalf of the petitioner, after elaborately referring to the facts of the case on the basis of the documents annexed with the main application as well as the supplementary affidavit thereto, has emphatically submitted that the learned court below has committed error of jurisdiction and material irregularity in refusing to reject the plaint. It has been contended that the documents on record clearly demonstrate that the suit filed by the plaintiffs was barred by limitation as well as other laws and the finding to the contrary by the learned court below is perverse.

Learned counsel for the plaintiff-opposite parties, however, has supported the impugned order by submitting that the averments made in the plaint alone are to be looked into while considering the prayer under Order VII Rule 11 and the same clearly establish that the suit filed by the plaintiffs is not barred by limitation or any other law justifying the prayer for rejection of the plaint.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is transparent from the averments made in the plaint (Annexure-3 to the supplementary affidavit) that besides stating the payments of the consideration money to the defendant on different dates, the plaintiffs have specifically stated that the defendant has finally refused to



execute the sale deed as agreed on 19.04.2000.

The principles governing the prayer for rejection of the plaint has been notice by the Apex Court in case of **Kuldeep Singh Pathania Vs. Bikram Singh Jaryal 2017 (1) PLJR SC 484** as follows:-

“.....But that is not the situation as far as the enquiry under Order VII Rule 11 is concerned. That is only on institutional defects. The court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action.

.....In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.....”

Tested on the anvil of the above dictum of the Apex Court, it is demonstrably clear that the suit filed by the plaintiff for specific performance of contract against the defendant on 24.04.2009 stating the date of refusal of performance to be on 19.04.2009 is within the period of limitation as prescribed under Section 54 of the Limitation Act. Even otherwise also, the learned court below has rightly held that the issue of limitation is a mixed question of law and fact to be decided on the basis of evidence adduced by the parties.



During the course of submission on behalf of the petitioner, this Court has not been persuaded to come to the conclusion that the suit filed by the plaintiffs is barred by any other law in view of the averments made in the plaint.

This Court, therefore, comes to the conclusion that there is no error of jurisdiction or material irregularity in the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.04.2017
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