

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.248 of 2016

Sachindra Kumar Pandey & Ors

... .. Petitioner/s

Versus

Most. Shobha Devi & Ors

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. advocate
For the Respondent/s	:	Mr. Anil Kumar Jha, Sr. advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 28-11-2018 Heard Mr. Ganpati Trivedi, the learned senior counsel for the petitioners, and Mr. Anil Kumar Jha, the learned senior counsel for the opposite parties.

The petitioners have filed this petition against the part order dated 07.09.2015 passed by learned Sub Judge-IV, Patna in Title Suit No. 513 of 2012 by which the petition of the petitioners filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure has been dismissed.

The learned senior counsel for the petitioners submits that in view of provision as contained in Order VII Rule 11 (a) and (d) of the Code of Civil Procedure the power is vested in the court to hear petition, after perusal of the plaint itself, as to whether the plaint is liable to be dismissed under any provision of the Order VII Rule 11 of the Code of Civil Procedure but the court deferred the matter on many dates and, thus, the court



failed to exercise jurisdiction vested in it and on similar facts the Supreme Court in the case reported in (2003) 1 SCC 557 (Saleem Bhai v. State of Maharashtra) remitted the case to the trial court to pass order in accordance with law but I find from perusal of petition filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure on behalf of the petitioners that there is no averment in the petition as to how the suit is barred and plaint is liable to be rejected under VII Rule 11 (a) and (d) of the Code of Civil Procedure. The petitioners filed first petition under Order VII Rule 11 of the C.P.C. on 27.02.2013 but the petitioners did not press the matter on several dates and consequently the court dismissed the same on 16.07.2013 on account of non pressing the application. The petitioners again filed another petition under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure on 26.11.2013 but the same was not properly verified and the court rejected the petition. The petitioners again filed a petition under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure on 07.07.2015 and the court after hearing both sides found that question of maintainability of suit requires adducing evidence and that cannot be decided at the threshold before framing of issues and, accordingly, dismissed the petition.



Having considered the facts aforesaid, I find that the learned court below has rightly come to the conclusion that the question of maintainability of suit requires evidence and the same can be decided only after allowing both parties to adduce evidence on that point. Thus, I do not find any merit in this Civil Revision and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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