

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.296 of 2019**

=====

Ratan Lal Patel aged about 62 years (Male) S/o Late Dev Ram Patel @ Deoki
Bhai Patel Resident of Mohalla-Bhikhana Pahari,P.S. Pirbahore,Dist.-Patna

... .. Petitioner

Versus

1. Dr. Binay Karak S/o Late Sri Ram Pratap Karak
2. Smt. Sony Karak W/o Dr. Binay Kumar Karak
Both residents of NC.107, S.B.I Officers Colony (Behind Gayatri Mandir)
Lohia Nagar Kankarbagh,Patna-20
3. Sri Binod Kumar S/o Late Ram Pratap Karak Resident of NC.110, S.B.I
Officers Colony (Behind Gayatri Mandir) Lohia Nagar Kankarbagh,Patna-
20
4. Smt. Rani Surekha W/o Sri Binod Kumar, resident of NC.110, S.B.I Officers
Colony (Behind Gayatri Mandir) Lohia Nagar Kankarbagh,Patna-20
5. Birendra Kumar S/o Sri Ram Balak Mahto, resident of Opposite Community
Hall, Rajendra Nagar,T own and District-Patna

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr.Shailendra Kumar Jha, Advocate
For the Respondents	:	Mr. J. S. Arora, Sr. Advocate
		Mr. G. Pratap, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 02-05-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 28.11.2018 passed in Eviction Suit No. 2 of 2015 by the learned Munsif-1, Patna whereby he has rejected the petition filed



by the petitioner under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC') for rejection of the plaint.

2. Learned counsel appearing for the petitioner submitted that the court below without considering the facts and law has dismissed the application filed by the petitioner. He submitted that the court below ought to have allowed the application filed by the petitioner under Order VII Rule 11 of the CPC and rejected the plaint filed by the plaintiffs-respondents.

3. On query, as to on which grounds the petitioner pleaded rejection of the plaint, learned counsel appearing for the petitioner fairly conceded that the grounds mentioned in Order VII Rule 11 of the CPC are not available in the present case. However, the suit ought to have been held not maintainable in view of the fact that the properties mentioned in Schedule-1 do not match with the properties mentioned in the sale deed.

4. The short facts of the case are that the plaintiffs-respondents have filed an Eviction Suit No. 2 of 2015 in the court of Munsif at Patna claiming themselves to be the owners of the property mentioned in Schedule-1 of the plaint. The said Schedule-1 property has been claimed to be purchased by these plaintiffs through different sale deeds of different area and



different boundaries. They have sought a relief for eviction of the defendant from Schedule-1 property of the plaintiff. In the said eviction suit, the petitioner, who is one of the defendants filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaintiff without disclosing any ground as mentioned in Order VII Rule 11 of the CPC.

5. Order VII Rule 11 of the CPC provides for rejection of the plaintiff on the following grounds:

“(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaintiff to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.”



6. The proviso to said rule provides that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

7. From the aforesaid provisions, it would be apparent that a plaint can be rejected only if the suit appears from the statement in the plaint to be barred by any law or where the relief claimed is undervalued or where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped or where it is not filed in duplicate or where the plaintiff fails to comply with the provisions of rule 9.

8. It is also a settled position in law that the application for rejection of the plaint can be decided by the court only on the basis of averments made in the plaint. For the said purpose, any other infirmity except infirmities enumerated in Order VII Rule 11 of the CPC cannot be taken into consideration.

9. Since it is an admitted case of the petitioner that no ground as enumerated under Order VII Rule 11 was



available to the petitioner, no illegality can be found with the order
impugned passed by the learned Munsif.

10. Accordingly, the application, being devoid of
any merit, is dismissed.

(Ashwani Kumar Singh, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2019
Transmission Date	NA

