

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.564 of 2019

1. Syed Tabin Rushad Son of Syed Mohammad Mohsin Resident of 207/1-D, New Patliputra Colony Patna 800013, Police Station and Post Office-Patliputra, District Patna, District Patna
2. Taskeen Badar W/o Syed Tabin Rusad and D/o Late Dr. S.M. Badrul Hassan Resident of 207/1-D, New Patliputra Colony Patna 800013, Police Station and Post Office-Patliputra, District Patna

... .. Petitioners

Versus

1. Md. Sohaib Son of Md. Shohail Resident of Mohalla-Lodipur Mansoorpur, Post Office Khushrupur, Police Station Khushrupur, District-Patna (Plaintiff)
...Respondent 1st Set.
2. Md. Shohail Son of Late Abdullah alias Sheikh Chhedi Resident of Village-Lodipur Mansoorpur, Post Office Khushrupur, Police Station Khushrupur, District-Patna.
3. Md. Fozail Son of Md. Shohail Resident of Village-Lodipur Mansoorpur, Post Office Khushrupur, Police Station Khushrupur, District-Patna.
4. Md. Owais Son of Md. Shohail Resident of Village-Lodipur Mansoorpur, Post Office Khushrupur, Police Station Khushrupur, District-Patna.
5. Md. Oqais Son of Md. Shohail Resident of Village-Lodipur Mansoorpur, Post Office Khushrupur, Police Station Khushrupur, District-Patna.
6. Sabila Khatoon W/o Md. Jawed Resident of Mohalla-Noon Ka Chauraha, Kangahiya Tola Banglapar, Policed Station Khajekalan, Post Office Jhauganj, District Patna. (Defendants 1 Set)
...Respondents 2nd Set.
7. Anjum Bano D/o Late Mohibul Haque and W/o Late Md. Athar Hussain Resident of Mohalla-Ramna Road, Police Station Pirmahore, Post Office Bankipur, District Patna.
8. Md. Eqbal Ashraf Son of Late Mohibul Haque Resident of Mohalla-Ramna Road, Police Station Pirmahore, Post Office Bankipur, District Patna.
9. Md. Ahmad Hussain Son of Late Mohibul Haque Resident of Mohalla-Ramna Road, Police Station Pirmahore, Post Office Bankipur, District Patna.
10. Tabassum Rokhsana D/o Late Mohibul Haque Resident of Mohalla-Ramna Road, Police Station Pirmahore, Post Office Bankipur, District Patna.
11. Bibi Nasreen D/o Late Md. Enamul Haque and W/o Dr. Shahabuddin Resident of Mohalla Ramna Road, Post Office Bankipur, Police Station Pirmahore, District Patna. (Defendant 2nd Set)
...Respondent 3rd Set.
12. Ehsanul Haque Son of Late Israrul Haque Resident of Neem Tola Sabzibagh, Police Station Pirmahore, Post Office Bankpur, District Patna.
13. Bibi Kazda Hassan @ Bibi Kazo D/o Late Israrul Haque Resident of Mohalla Nai Sarak, Police Station Khajekalan, Post Office-Jhauganj, Patna City, District Patna.
...Respondent 4th Set.



14. Sanjida Khatoon W/o Late Dr. Badrul Hassain Resident of 207/1-D, New Patliputra Colony Patna 800013, Police Station and Post Office-Patliputra, District Patna (defendant no. 13 4th Set)

...Respondent 5th Set.

15. Rehana Khatoon W/o Late Md. Waseem Resident of Badi Haveli, Mohalla-Saguna, Police Station Danapur, District-Patna.
16. Viqar Azim Son of Late Md. Waseem Resident of Badi Haveli, Mohalla-Saguna, Police Station Danapur, District-Patna.
17. Firoz Azim Son of Late Md. Waseem Resident of Badi Haveli, Mohalla-Saguna, Police Station Danapur, District-Patna.
18. Nahid Salima D/o Late Md. Waseem and W/o Dr. Ehsanul Tauhid Resident of Badi Haveli, Mohalla-Saguna, Police Station Danapur, District-Patna.
19. Hena Salima D/o Late Md. Waseem Resident of Badi Haveli, Mohalla-Saguna, Police Station Danapur, District-Patna.
20. Sulaiman Ashraf Son of Late Hafiz Abdul Mannan and Late Najma Khatoon D/o Late Md. Azim Resident of Mohalla-Ramna Road, Police Station-Pirbahore, Post Office-Bankpur, District-Patna.
21. Rizwan Ashraf Son of Late Hafiz Abdul Mannan and Late Najma Khatoon D/o Late Md. Azim Resident of Mohalla-Ramna Road, Police Station-Pirbahore, Post Office-Bankpur, District-Patna.
22. Raihan Ashraf Son of Late Hafiz Abdul Mannan and Late Najma Khatoon D/o Late Md. Azim Resident of Mohalla-Ramna Road, Police Station-Pirbahore, Post Office-Bankpur, District-Patna.
23. Md. Ataur Rahman Son of Late Dil Mohammad Resident of Block C-1 Flat No.104, Farhan Enclave, Post Office B. V. College, Police Station-Shastri Nagar, District-Patna 800014.
24. Sanjay Kumar Singh Son of Late Kameshwar Prasad Resident of Opposite Rupak Cinema (Bimla Bhawan) Bakerganj, Police Station-Pirbahore, Post Office-Bankipur, District-Patna.
25. Tarannum Jahan W/o Md. Ataur Rahman Resident of Block-C-1, Flat No.104, Farhan Enclave, Post Office B.V.College, Police Station-Shastri Nagar, District Patna 800014.
26. Kiran Kumari W/o Sri Kaushal Kumar Resident of Flat No.201, Ramrati Mention Saguna More, Police Station and Post Office Danapur, District Patna.
27. Dropadi Devi W/o Radhey Shyam Resident of Ganj Road, Danapur, Police Station and Post Office-Danapur, District Patna.(defendant 5th Set.)

... .. Respondent 6th Set.

Appearance :

For the Petitioners : Mr.Rajendra Prasad Singh, Advocate
For the Respondents : Mr.Shiva Shankar Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT



Date : 26-09-2019

Heard learned counsel for the petitioners and learned counsel for respondent 1st Set.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 07.03.2019 passed by the learned Sub-Judge-1, Danapur in Title Partition Suit No. 209 of 2018 by which he has rejected the petition dated 23.08.2019 filed under Order VII, Rule 11(d) of the Code of Civil Procedure (for short 'CPC') filed by the petitioners-defendant nos. 14 and 15.

3. Learned counsel appearing for the petitioners submitted that the trial court failed to appreciate that the suit was hopeless time barred by law of limitation, which would be apparent from the averments made in the plaint read with order of the Deputy Collector Land Reforms referred in the plaint. He submitted that the trial court has also failed to appreciate that the plaint was cleverly drafted to get over the bar of limitation. He pleaded that the trial court failed to appreciate the ratio laid down by the Supreme



Court in **Raghwendra Sharan Singh vs. Ram Prasanna Singh** , since reported in **AIR 2019 SC 1430**.

4. *Per contra*, learned counsel appearing for the respondent 1st set submitted that the trial court has rightly held that the issues involves the moot question of law and facts. He has also taken into consideration all the decisions cited by the parties and found no legal merit and force to allow the petition filed under Order VII, Rule 11(d) of the CPC on behalf of the petitioners. He contended that from the averments made in the plaint it would be manifest that the suit in question was not barred by law of limitation.

5. Having heard learned counsel for the parties and perused the materials on record, I find that the suit was filed by respondent 1st set for the following reliefs:-

"A. On adjudication the decree for partition declaring the share of the plaintiff in respect of suit property described in Schedule-B of the Plaint be passed by declaring the Memo of Partition dated 9/2/2015, two development agreement dated 16/11/2015 and Two Regd. sale deed dated 11.3.2017 as well as any other



deeds of transfer in favour of predecessor of defendant no. 13 to 15 and predecessor of defendant no. 16 to 23 and 28 are void illegal, invalid void, ab-initio and are not binding on Plaintiff and on defendant no. 1 to 5.

B. A survey knowing pleader commissioner be appointed to curve out the separate Takhta of the plaintiff and after submitting the pleader commissioner report a final decree be passed against the defendants and accordingly the plaintiff be put in possession over the allotted portion of the property in question through the process of the court.

C. An order temporary injunction restraining the defendants from transferring encumbering the suit property and from making any construction over suit property and from the changing by physical feature of the suit land be passed.

D. Cost of the suit be awarded.

E. Any other relief or reliefs to which the plaintiff found to be entitled be passed.”

6. After service of summons, the petitioners



filed an application under Order VII Rule 11(d) of the CPC praying therein for rejecting the plaint as the suit was hopelessly barred by law of limitation. The application was filed mainly on the ground that after going through the averments made in the plaint as well as on the basis of documents referred to by the plaintiff in the plaint, it would appear that the suit is bared by law of limitation.

7. While arguing the case, the learned counsel for the petitioners has referred to para-10 of the plaint wherein it has been stated that late Athar Hussain husband of defendant no. 6 and defendant no. 7 to 10 have filed Mutation Case No. 6/2003-2004, 424/2004-2005 before the court of learned Deputy Collector Land Reforms, Danapur in which proceeding an order was passed on 21.06.2005. It has further been stated in para-10 of the plaint that in the said mutation proceeding before learned Deputy Collector Land Reforms, Danapur, Md. Waseem Sb, husband of defendant no. 16, father of defendant no. 17 to 20 including other defendant nos. 21 to 23 and Dr. Badrul Haque, husband of defendant no. 13 and father of



defendant no. 15 and defendant no. 28 had illegally put their claim in respect of property in question on the basis of void ab-initio, illegal, invalid sale deeds as alleged by them.

8. The contention of the petitioners is that the plaintiff has deliberately concealed the data of all the aforesaid sale deeds by which the alleged referred persons had put their claim of purchasing the suit lands.

9. The respondent 1st set had contested the matter before the trial court. It was specifically stated that the order dated 21.06.2005 passed by the learned Deputy Collector Land Reforms, Danapur was challenged in revision vide Mutation Revision No. 22 of 2006, , 21/2005-06, 24/2005-06, 25/2005-06 before the Collector, Patna, which are still pending under consideration.

10. The contention of behalf of respondent 1st set is that once a litigation started and is continuing, there is no question of limitation.

11. The court below having considered the rival submissions made on behalf of the parties dismissed the application vide impugned order dated 07.03.2019



holding as under :-

“Taking into consideration the entire facts and circumstances of the case. After hearing both sides perused the case record, the petitions, the rejoinders and the decisions of Hon’ble Courts filed on behalf of both sides. The main question between the parties is that whether plaintiff of this case inspite of good knowledge of Mutation order dt. 21.06.2005 not filed the present case within time under article 59 of the limitation Act 1963, so this case is barred under law of limitation. For any petition U/o 7 Rule 11 C.P.C. court will have to only examine averments of plaint not any kind of defence taken by defendants it is held by “Hon’ble Patna High Court in 2016 (4) P.L.J.R. M/s Raj Engcon Project (I) Limited vs. M/s Sahara India Housing Limited 691- while consiering the application under O. VII R. 11, the court has to examine the averments of the plaint and not the WS or other materials on record to reject the plaint.” Further the Hon’ble Supreme Court held that “Where in a suit for declaration of title, possession and consequential injunction based on sale



deed, the defendants disputes the boundary description of the property in the sale deed and in the suit and raised the plea of barred by limitation, it was held by the Supreme Court that the dispute regarding the boundaries of the suit property is a question of fact which is to be considered during the trial of the suit and limitation would not commence unless there has been clear and unequivocal threat to the right claimed by the plaintiff. Therefore, the application for rejection of the plaint on the ground that the suit was barred by limitation under Art. 58 of the Limitation Act, 1963 : (2007) 14 SCC 183, See also Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510 : (2005) 12 JT 302; Balasaria Construction (P) Ltd. v. Hanuman Seva Trust and Ors., (2006) 5 SCC 658.) Further in other cases held by Hon'ble Court "Where the suit is barred by limitation, the plaint would be rejected under O. 7 R. 11 (d). [N.V. Srinivasa Murthy v. Mariyamma, AIR 2005 SC 2897 (2900)]. If the question of limitation is connected with the merit of the claim, such



point has to be tried along with other issues, [Arjan Singh v. Union, A 1987 Del 165] but not where there is no clear or specific admission in the plaint suggesting that the suit barred [Ratan v. Secy of State, 18 CWN 1340; Sreedam v. Tincori, A 1953 C 222; British Airways v. Arts Works Export Ltd, A 1986 Calcutta 120, 123. Also see Manohar Lal Chatrath v. Municipal Corporation of Delhi, 82 (1999) DLT 33 (DB)]. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of fact and law [Khaja Quthubuliah v. Govt. Of A.P., AIR 1995 AP 43, 46; Mariyamma (Smt.) v. N.V. Srinivasa Murthy, AIR 2003 NOC 375 (Kant)]. Keeping in view the decision of Hon'ble Courts this court is of the view that question of limitation in the present case is mixed question facts and laws, no where in the plaint fact of acknowledgement mentioned on date 21.06.2005 about which defendants are arguing that it is the date of knowledge and plaintiff filed this case at very belated time in the year 2018 and violating the law of limitation, but on perusal of the plaint it can be said that



plaintiff has nowhere specifically admitted the date of knowledge also it is motioned in the rejoinder of the plaintiff that against the order dated 21.06.2005 passed by D.C.L.R., Danapur the Mutation Revision are pending before the Collector, Patna. But the defendants have intentionally did not disclosed the fact regarding the pendency of Mutation Revision and thus the litigation are continuing between the parties. Thus for the just decision of this case court finds it justifiable and reasonable to incorporate the issue of limitation at the time of framing of issues, after recording the evidence, conclusion of trial, issue of limitation will be well adjudicated. Thus at present stage of this case this court finds no legal merit and force to allow the petitions U/O 7 Rule 11 in the light of these observations, the petitions U/O 7 Rule 11 filed dated 23.08.18 on behalf of defendant no.14 and 15 and dated 11.09.18 filed on behalf of defendant no. 16 to 23 are hereby rejected. Defendants are directed to file their respective written statements and thereafter proceed with the case in



accordance with law. Put on dated
25.03.19 for filing of W.S.”

12. A perusal of Order VII, Rule 11 of the CPC makes it clear that the relevant facts which need to be looked into for deciding an application are the averments in the plaint. Thus, for the purpose of deciding an application under Order VII, Rule 11(d), the averments made in the plaint are germane. The plea taken by the defendant in the written statement would be of no consequence at that stage.

13. The averments made in the plaint would suggest that the challenge made by the plaintiff is to the Memo of Partition dated 09.02.2015, two development agreements dated 16.11.2015 and two registered sale deeds dated 11.03.2017. The suit was filed on 28.05.2018.

14. In that view of the matter, on perusal of the averments made in the plaint itself, it cannot be said that the suit was barred by law of limitation.

15. In **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.**, since reported in **2018 SCCR 593**, a three-judge Bench of the Supreme Court ruled



“the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of powers under Order VII, Rule 11(d) of the CPC”.

16. In **Raghwendra Sharan Singh vs. Ram Prasanna Singh** (supra), relied upon by the petitioners, under the facts and circumstances of that case, the Supreme Court interfered with the order passed by the High Court and the learned Munsif whereby the application filed on behalf of defendants to reject the plaint in exercise of power under Order VII, Rule 11(d) of the CPC had been rejected. In the said case also, the Supreme Court has clearly held that considering the averments made in the plaint, if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order VII, Rule 11(d) of the CPC.

17. There is absolutely no dispute to the ratio laid down by the Supreme Court in **Raghwendra Sharan Singh vs. Ram Prasanna Singh** (supra). However, in the preset case, from the averments made in the plaint of



respondent 1st, it cannot be said that the suit is barred by law of limitation.

18. In that view of the matter, I am not inclined to interfere with the order passed by the court below in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

19. The application is dismissed with liberty to the petitioners to file written statement within a week after Durga Puja holidays, failing which the suit shall proceed in accordance with law.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2019
Transmission Date	

