

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.250 of 2016

In
CIVIL MISCELLANEOUS JURISDICTION No.337 of 2016

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1. Makundeo Safi, son of Kanu Safi, Motafa.
 2. Santosh Safi, minor son of Makundeo Safi, represented through his natural guardian father Makundeo Safi.
Both resident of Village Dekuli Dham, P.S. Biraul, District- Darbhanga.

... .. Petitioner/s

Versus

1. Viveka Devi, daughter of late Mahendra Safi, wife of Dashrath Safi, presently resident of village- Kujji, P.O. Khaira, P.S. Bahadurpur, District- Darbhanga.
2. Jibachhi Devi, daughter of late Mahendra Safi, wife of late Baidyanath Safi, presently resident of village, P.O. and P.S. Baheri, District- Darbhanga
3. Domi Safi, son of Mahendra Safi.
4. Bikash Safi, son of Domi Safi.
5. Ghutar Safi, son of Domi Safi.
Minor sons of Domi Safi represented through natural guardian father namely Domi Safi.
All (1-5) are resident of village Dekuli Dham, P.S. Biraul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Jha, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 11-07-2019

Heard the parties.

2. This civil revision application has been filed for setting aside the order dated 28.01.2016 passed by learned Munsif, Biraul at Darbhanga in Title Suit no. 05 of 2007 by which the learned court has rejected the petition filed by defendant/petitioner under Order 7 Rule 11 of C.P.C. for



rejection of plaint.

3. Plaintiff/Mahendra Safi had filed a Title Partition Suit being P. S. No. 05 of 2007 for the partition of joint family property as detailed in the plaint. Plaintiff's case as disclosed in plaint in that from wedlock of Mishri Baitha and Sugiya Devi, three sons namely, Yogi Safi, Damodar Safi and Mahendra Safi were born and after death of their parents partition took place in which Yogi Safi and Mahendra Safi remained joint having 2/3rd share in the property and Damodar Safi started residing at another place however there was no partition by metes and bonds.

4. Plaintiff further alleged that defendant no.1 fraudulently got a deed of gift dated 14.12.1990 executed in their favour with respect to property of Damodar Safi taking advantage of his mental illness and claimed 2/3rd share in property.

5. Defendants appeared and filed their written statement and stated that Mishri Baitha had three sons and two daughters namely Ramiya Devi and Uma Devi and after death of their father Mishri Baihta property was partitioned and Yogi Safi and Damodar Safi remained joined and Mahendra Safi Separated and Ramiya Devi and Uma Devi relinquished their



share in favour of their brothers. Yogi Baitha and Damodar Baitha were issueless and after death of Yogi Biahta, Damodar Baitha became the owner of 2/3 property who executed a deed of gift dated 14.12.1990 in favour of defendant no.1 and accordingly defendant no.1 became the owner of 2/3rd property.

6. Defendants filed a petition under Order 7 Rule 11 of C.P.C. for rejection of paint on the ground that plaintiffs have challenged the deed of gift dated 14.12.1990 and issue has been framed by the trial court regarding validity of gift deed for which ad volarum court fee has not been paid and nature of the suit has changed from partition suit to declaration of the gift deed dated 14. 12.1990 as void and inoperative, as such, suit is barred by law.

7. The trial court has held that issues has already been framed in this case on 09.08.2008 and evidence on behalf of plaintiff has already concluded and case is fixed for evidence of defendant and thereafter present petition under Order 7 Rule 11 has been filed.

8. The plaint under Order 7 Rule 11 of C.P.C. can be rejected if from reading of the plaint same does not disclose any cause of action or the suit is barred by any law. Defendants/petitioners could not show either of the grounds on



basis of which plaint can be rejected under Order 7 Rule 11 of C.P.C. Reading of the plaint discloses cause of action for filing the suit and the suit is not barred by any law and accordingly the trial court has rejected the application filed by defendant/petitioner as non of the grounds exists to reject the plaint under Order 7 Rule 11 C.P.C. and accordingly dismissed the petition filed by the defendant/petitioner for rejection of plaint under Order 7 Rule 11 of C.P.C.

9. After hearing the parties and perusing the order passed by the trial court this court does not find any material irregularity or jurisdictional error in the order passed by the court below accordingly the present civil revision petition is dismissed.

(S. Kumar, J)

Rajiv/-

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

