

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.19 of 2017

=====

Dilip Kumar Gupta, S/o Sri Dineshwar Prasad Gupta, R/o Ramjee Chak,
Bataganj, P.S.- Digha Town and District- Patna.

... .. Petitioner/s

Versus

Kameshwar Prasad Gupta, S/o Late Rameshwar Prasad Gupta, R/o Ramjee
Chak, Bataganj, P.S.- Digha Town and District- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Waliur Rahman, Advocate
Mr. Nishant Kumar Sinha, Advocate
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 03-04-2019

Heard learned counsel for the petitioner.

2. This civil revision has been preferred, under Section 115 of the Code of Civil Procedure, against the order dated 14.07.2016, passed by the learned Sub-Judge-IV, Patna in Eviction Suit No.562 of 2014.

3. The sole opposite party, *Kameshwar Prasad Gupta* filed Eviction Suit No.562 of 2014 against the petitioner praying therein for declaration that the plaintiff is absolute owner of the suit premise detailed in schedule 1 of the plaint and possession of the defendant is permissive possession. The plaintiff further prayed that a decree of eviction be passed directing the defendant to vacate and deliver the suit premise to the plaintiff by the date fixed by the court.



4. The plaintiff asserted in the plaint that suit property was acquired by the plaintiff in a partition of the joint family property in Partition Suit No.252 of 1997 and after partition decree the defendant-petitioner was in permissive possession of the premise allotted in partition to the plaintiff.

5. In para 14, plaintiff has stated that :-

“Cause of action for the suit arose on all the dates mentioned above and on the date when the private partition among the three sons of Late Raj Kumar Lal was held on 26.12.1985 and on the date when the plaintiff allowed the defendant to remain in one of the rooms of the suit premises and lastly on the date when the defendant failed to vacate the premises within the jurisdiction of this court”.

The plaint further reveals that plaintiff is son of *Late Rameshwar Prasad Gupta*, who was full brother of *Dineshwar Prasad Gupta*, the father of the petitioner, as such relationship between the parties is of agnates.

6. The defendant appeared in the suit and filed a petition that plaint be rejected under Order VII Rule 11 of the Code of Civil Procedure, as it does not disclose any cause of action, rather the cause of action disclosed is imaginary and concocted one. Appeal against decree passed in partition suit is still pending. Partition by metes and bounds has not taken place.



Hence, just to harass in the guise of eviction suit, a dispossession of a co-sharer has been sought for.

7. The learned court below rejected the prayer of the defendant-petitioner by the impugned order dated 14.07.2016 passed in Eviction Suit No.562 of 2014, recording a finding that plaintiff has got cause of action for the suit.

8. Order VII Rule 11 of the Code of Civil Procedure Code provides for rejection of the plaint on the ground mentioned therein, which are being reproduced below:-

Rejection of plaint - The plaint shall be rejected in the following cases :-

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

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so 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 plaint 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 plaint 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.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers 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 from



correcting the valuation or supplying the requisite stamp-papers, 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.]

9. Without going into the merit of the suit, it is evident that this is not a case where the plaint does not disclose any cause of action or it is under value or court fee paid is insufficient or the suit is specifically barred under any law or there is non-compliance of filing of duplicate copy of the plaint. Therefore, I am of the considered view that the court below has not acted beyond its jurisdiction or has failed to exercise jurisdiction vested in it, nor the court below has acted with material irregularity or illegality in passing the impugned order.

10. Reference of the judgment of the Hon'ble Supreme Court in *R.K.Roja Vs. U.S.Rayudu and Another* reported in *2016 (3) JBCJ (SC) 185* has been made on behalf of the petitioner, wherein the Hon'ble Supreme Court has held that application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure should be considered only on the basis of disclosure in the plaint and not on the basis of allegation made in the petition filed by the defendant or statement made in the written statement. Likewise, once application under Order VII Rule 11 of the Code of Civil



Procedure is filed that should be disposed of before proceeding with the trial.

11. Therefore, legal issue involved in this case is squarely covered. The court below has considered the application under Order VII Rule 11 of the Code of Civil Procedure on the basis of averment made in the plaint. Hence, this civil revision application is *dismissed* as devoid of any merit.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.04.2019
Transmission Date	04.04.2019

