

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.95 of 2015

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Jitendra Sharma, son of Late Sideshwar Singh, resident of Village - Nizamuddinpur, Pargana - Bhelawar, P.S. and District - Jehanabad.

... .. Petitioner/s

Versus

1. Satish Prasad Singh @ Shyam Deo Singh
2. Shashi Bhushan Prasad Singh, Both sons of Late Bhairon Singh, Resident of Village- Parsawan, P.S - Pandarak, District - Patna, At present Resident of Village - Nizamuddinpur, P.S. and District - Jehanabad.
3. Manoj Sharma @ Gonu Sharma, Son of Batchu Singh, Resident of Village- Nizamuddinpur, P.S. and District - Jehanabad
4. Shri Krishna Sharma, Son of Sri Janardan Singh, resident of Village + P.O.- Banwaria, P.S. - Ghoshi, District - Gaya at present Jehanabad
5. Pankaj Kumar
6. Niraj Kumar, both sons of Kaushal Kishore, Resident of Village- Malahabad, P.S. - Goh, District- Aurangabad.
7. Runi Kumar, Daughter of Kaushal Kishore, Resident of Village - Sonbhadra, P.S. - Karpi, District- Arwal

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate Mr. Gaurav Pratap, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

7 03-04-2019 Heard learned counsel for the petitioner as well as respondent no. 1 and 2.

2. This civil revision is directed against order dated 15.07.2015 passed in Title Suit No. 40 of 2006 whereby the learned Munsif, Jehanabad has refused to reject the plaint under Order 7, Rule 11 of the Code of Civil Procedure (in short 'C.P.C.') on the prayer of the defendant no. 2, who is petitioner herein. Rejection was sought for on the ground that plaint does



not disclose cause of action for the suit, the suit is under valued and there is reference of Schedule-C in the plaint but there is no such Schedule forming part of the plaint.

3. The impugned order would reveal that the learned court below has recorded that the question of under valuation of the suit and pecuniary jurisdiction was earlier raised by the defendant and the same was decided by order dated 27.07.2007. Thereafter, the defendant challenged the same in Civil Revision No. 2193 of 2007 before the Hon'ble Patna High Court and the High Court by order dated 07.04.2010 dismissed the civil revision application as withdrawn with liberty to the petitioner to raise the issue at the time of final hearing of the suit. The learned court below recorded that the defendants wants to delay the proceeding on one pretext or other on flimsy ground. However, the impugned order does not reveal that the learned court below has examined the issue whether the plaint discloses any cause of action or not, though the petitioner specifically stated in para 9 to the petition, filed for order under Order 7, Rule 11 of the C.P.C., before the court below that the plaint suffers from non-disclosure of cause of action for the reasons mentioned therein.

4. Non-disclosure of cause of action is one of the



grounds for rejection of the plaint in Order 7, Rule 11 of the C.P.C. Therefore, the learned court below should have examined the issue on that angle also and have recorded reasoned order. Therefore, in my view, the learned court below has acted with material irregularity. Hence, the impugned order is set aside and the matter is remitted back to the learned court below to decide the aforesaid issue within a period of four weeks from the date of receipt/production of a copy of this order.

5. Accordingly, this civil revision application is allowed.

(Birendra Kumar, J)

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