

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.2 of 2019

-
-
1. Bhushan Prasad S/o Late Tahal Mahto Resident of Village Akbarpur, P.S. Asthawan, Dist. Nalanda
 2. Umesh Prasad S/o Sita Ram Singh Resident of Village Nizampura, P.S. Asthawan, Dist. Nalanda
 3. Birendra Prasad S/o Sri Sita Ram Singh Resident of Village Nizampur, P.S. Ashtawan, Dist. Nalanda
 4. Kedar Prasad S/o Sri Basudeo Singh Resident of Village Nizampur, P.S. Asthawan, Dist. Nalanda
 5. Ram Vijay Prasad S/o Late Kameshwar Prasad Singh Resident of Mohalla-Nizali Kilagarh Par, P.S. Bihar, Dist. Nalanda

... .. Petitioner/s

Versus

1. Lala Sirish Kumar Sinha S/o Late Krishna Prasad Resident of Mohalla Mohiuddinpur Nagar, Ambar, P.S. Bihar, Dist. Nalanda
2. Bindeshwari Prasad S/o Late Shiv Shankar Prasad Resident of Mohalla-Alinagar, P.S. Bihar, Dist. Nalanda
3. Om Prakash Prasad @ Lalu Prasad S/o Late Shiv Shankar Prasad Resident of Mohalla-Alinagar, P.S. Bihar, Dist. Nalanda
4. Smt. Sakunma Devi W/o Hiralal Sao, D/o Late Shiv Shankar Pd. Resident of Mohalla-Alinagar, P.S. Bihar, Dist. Nalanda
5. Sri Shyam Nandan Singh S/o Late Krish Nandan Singh Resident at Mohalla Garhpar Kila, P.S. Bihar, Dist. Nalanda
6. Smt. Anju Sinha D/o Sri Trivani Prasad Singh Resident of Village Nari Murar, P.S. Warshaliganj, Dist. Nalanda
7. Smt. Rekha Devi W/o Sanjay Kumar Resident of Village-Mahrath, P.S. Warshaliganj, Dist. Nawada
8. Surendra Prasad S/o Late Baleshwar Mahto Resident of Mohalla-Azizghat, P.S. Bihar, Dist. Nalanda
9. Satyendra Kumar S/o Kishori Prasad Resident of Mohalla Kamruddinganj, Police Station, Bihar, Dist. Nalanda
10. Kanti Devi W/o Amrendra Kumar P.S. Harnaut, Dist. Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate with Mr. Abhinay Raj, Advocate, Mr. Alexander Ashok, Advocate Mr. Rabindra Prasad Singh, Advocate
For the Respondent/s	:	Mr. Kumar Mritunjay Narain
For Opposite party No1	:	Mr. J.S. Arora, Sr. Advocate.



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 08-01-2020

The petitioners No. 1,2,3 and 4, herein, are defendants No. 12,13,8 and 9 respectively, of Title Suit No. 108 of 2018 pending in the Court of learned Sub-Judge-I, Biharshariff, Nalanda. They had made an application in the Court below under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for rejection of the plaint filed by Opposite party No.1, the plaintiff, which has been rejected by an order dated 11.10.2018, passed by learned Sub-Judge-I, Biharshariff, which is under challenge in the present civil revision application filed under Section 115 of the Code.

2. Out of the six conditions mentioned under Order 7 Rule 11 of the Code either of which can be a ground for rejection of the plaint, the defendants had filed application with the plea that (i) it does not disclose cause of action 'and (ii) the suit, appears from the statement in the plaint, to be barred by any law'.

3. I have heard Mr. D. K. Sinha, learned Senior counsel appearing on behalf of the petitioners and Mr. J.S. Arora, learned Senior counsel representing the Opposite party



No.1.

4. Before coming to the merits of the case, it needs to be recorded that notices were directed to be issued to the Opposite parties by an order dated 12.04.2019 and further proceedings in the said T. S. No. 108 of 2018 were directed to be stayed. Opposite party No.1, who is the plaintiff has entered appearance through Vaklatnama and has filed I.A. No. 1 of 2019 for vacating the order of stay. From the office notes, it transpires that the notices on Opposite parties No. 2,5 and 8 were validly served, whereas Opposite party No.2 received notices on his behalf and on behalf of Opposite parties No. 3 and 4. Notice of Opposite party No.6 was received by his brother and notices of Opposite parties No.9 and 10 had been received by the Opposite party No.8. Notice of Opposite party No.7 was returned unserved. When the matter was taken up on 13.12.2019, it was contended on behalf of Opposite party No.1 that since the application filed by the petitioners for rejection of the plaint has been rejected by the impugned order and the plaintiff is present as Opposite party No.1 to oppose the present application, other respondents are not required to be heard in the present matter. Since the sole plaintiff has entered appearance and this application has been filed for setting aside of an order



passed on an application filed by these petitioners for rejection of the plaint, I have proceeded to hear this matter on merits for final disposal, with the consent of learned senior counsel, instead of confining it to the Interlocutory application filed by contesting Opposite party No.1 for vacating the interim order of stay.

The plaint has been brought on record by way of Annexure-A to I.A. No. 1 of 2019. It can be easily culled out from the plaint that the plaintiff has sought for the following reliefs:-

“a. To declare right, title and interest of the plaintiff in the suit land described in Schedule No.2 of the plaint and the Defendants have no right, title and interest therein.

b. To declare registered sale deed dated 28.7.1983, 19.01.2014 and 09.05.2017 as well as 09.05.2014 as illegl void, abinitio and not binding on the plaintiff.

c. To restrain the Defendants by an order of ad-interim/temporary injunction from executing any document in respect of Schedule-II property and from interdicting his possession on the same



till final decision of the suit.

d. Cost of the suit be awarded to the plaintiff.

e. Any other Relief be also granted to the plaintiff for which he may be deemed entitled to.”

5. It transpires from the averments made in I.A. No. 1 of 2019 that whereas the petitioners had filed the application for rejection of the plaint, under Order VII Rule 11 of the Code, the plaintiff had filed a petition under Order 39 Rules 1 and 2 of the Code for passing an ad-interim order of injunction against the defendants. Both the petitions were heard together and by the impugned order both the applications viz, the application filed by the plaintiff for grant of ad-interim injunction and the application filed by these petitioners for rejection of the plaint have been dismissed. This is why the petitioners have put to challenge the impugned order to the extent prayer of the petitioners to rejected the plaint has been refused.

6. The Opposite party No.1 has filed the suit for declaration of his right title and interest over the suit property as described in Schedule II of the plaint and also for declaration that the sale deeds dated 28.07.1983, 29.01.2014 and



09.05.2014 are illegal and void *abinitio* documents and are, therefore, not binding on the plaintiff.

7. Briefly narrated, it is the plaintiff's case that the suit property was recorded in Survey khatian as *bakast Malik*, which was under the possession and cultivation of one Radhe Prasad Singh. An area of 25 decimals out of 37 decimals of disputed plot was auction sold to one Munsu Mahto Lal in the year 1933 *vide* Execution Case No. 72 of 1923 and accordingly, possession was delivered through agency of the Court in 1934. Remaining six decimals of land of the concerned plot No. 380 was also auction sold subsequently on 17.01.1938 and possession was delivered through the agency of the Court. Subsequently Munsu Mahto Lal and others sold 31 decimals of land by two registered deeds dated 31.12.1938 and 18.06.1941 in favour of Smt. Mit Kunwar alias Ashashwar Kunwar, who came in possession over the said lands. The said Mit Kunwar was the own grandmother of the plaintiff, who died in 1957, leaving behind her only son i.e., plaintiff's father, Krishna Prasad Sinha. Name of the petitioners' father was mutated in Government *Sherista* and rent receipts were issued in his name. It is the case of the plaintiff that defendant Nos. 1,2 and 3, without any right title and interest and possession succeeded in initiation of



proceedings under Sections 144 and 145 of the Code of Criminal Procedure, 1973 and they executed sale deeds dated 08.06.1983 in favour of defendant Nos. 4,6 and 11. The petitioners are the purchasers of the disputed land from the vendees of the sale deed dated 28.07.1983, who claimed to have acquired title and possession over the suit property through registered sale deeds dated 29.01.2014 and 09.05.2014.

8. In the background of the aforesaid pleadings in the plaint, it is the case of the petitioners that since the plaint does not disclose any cause of action and since the suit is hopelessly barred by limitation wherein, sale deed of 1983 is being put to challenge, the plaint deserved to be rejected by the Court below.

9. Mr. D. K. Sinha, learned Senior Counsel appearing on behalf of the petitioners has submitted that the Court below ought to have kept in mind delay of 35 years in filing of the suit to question validity of registered documents of 1983. He has submitted that the plaint does not disclose any immediate cause of action for the plaintiff necessitating him to file the suit. He has placed reliance on following Supreme Court's decisions in support of his contentions:-

(1) AIR 1977 SC 2421 (T. Arivandandam



Vs. Satyapal and another)

(2) AIR 2015 SC 2485 (P.V. Guru Raj

Reddy Vs. P. Neeradha Reddy and others)

(3) (2018) 6 SCC 422 (Chhotanben and

another Vs. Kiritbhai Jalkrushnabhai

Thkkar and others).

10. Mr. J.S. Arora, learned Senior Counsel appearing on behalf of Opposite party No.1/plaintiff has drawn my attention to paragraph 17 of the plaint to contend that the plaint refers to cause of action as the defendants were disturbing peaceful possession of the plaintiff and had started disputing his title on the strength of the said sale deeds executed in March, 2018, whereafter he had taken steps by approaching the Circle Officer of the concerned jurisdiction. In paragraph 18 of the plaint, it has been mentioned that when the Circle Officer had visited the disputed plot for inspection, the defendants assembled there and claimed their title on the basis of the registered sale deeds, whereafter the plaintiff, for the first time learnt about creation of deeds. With reference to the aforesaid pleadings, Mr. Arora, learned Senior Counsel has submitted that it cannot be said that a plaint does not disclose any cause of



action. He has further submitted that the period of limitation would begin to run when the registration of an instrument becomes known to the plaintiff. There being specific pleading in the plaint that the plaintiff learnt about execution of the sale deeds for the first time in 2018, the plaint could not have been rejected by applying Order VII Rule 11 of the Code. He has submitted that for the purpose of rejection of a plaint under Order VII Rule 11 of the Code, the competent Court is required to read the plaint as a whole, without looking into any other document or counter pleading. He has placed reliance on following decisions of the Supreme Court:-

(1) (2015) 8 SCC 331 (P.V.Guru Raj Reddy Vs. P. Neeradha Reddy and others).

(2) (2018) 6 SCC 422 (Chhotanben and another Vs. Kiritbhari Jalkrushnabhai Thakkar and others)

11. He has also relied on a decision of this Court in case of **I.T.C. Limited Vs. Shakuntala Devi and others** reported in **2012(2) PLJR 592** to bolster his contention.

12. There is no room for any doubt that in order to satisfy the conditions (a) and (d) of Order VII Rule 11, it must be



shown that the averments made in the plaint do not disclose any cause of action and secondly, it is barred under any law. The relevant consideration for invoking Clause (a) or Clause (d) of Order VII Rule 11 of the Code is the averments made in the plaint only, without any addition or subtraction. In case of **Kamla and others Vs. K.T. Eshwara Sa. (AIR 2008 SC 3174)**, the Supreme Court observed that for the purpose of invoking Order VII Rule 11(d) of the Code, no amount of evidence can be looked into and issues on merit of the matter, which may arise between the parties could not be within the realm of the Code at that stage. In case of **C. Natrajan Vs Ashim Bahi** reported in **(2007) 14 SCC 183**, the Supreme Court clearly held in paragraphs 8 and 9 that an application for rejection of the plaint can be entertained if the allegations made in the plaint even if given face value and taken to be correct in their entirety, appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. Paragraphs 8 and 9 of the said decision are being reproduced herein below:-

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint



even if given face value and taken to be correct in their entirety appeared to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the Court would not be entitled to consider the case of the defence (See *Popat and Kotecha Property V. SBI Staff Assn.*).

9. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act.”

13. Similar view has been taken by the Supreme Court in case of **P.V. Guru Raj Reddy Vs P. Neeradha Reddy** (supra), reliance on which has been placed by learned Senior Counsel for the petitioners, wherein the Supreme Court



reiterated that averments made in the plaint will have to be accepted as correct for the purpose of consideration of the application under Order VII Rule 11 of the Code. The Supreme Court had the occasion to deal with the issue of rejection of plaint on the plea of the same being barred by law of limitation. In that case a sale deed of 1979 was sought to be declared as illegal and void in a suit filed in 2002. The Supreme Court noticed the averments made in the plaint about subsequent acquisition of knowledge in respect of execution of sale deed within three years of which the suit was filed, as per the pleadings in the plaint. The Supreme Court observed that reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The Court reiterated that the claim of the plaintiffs in respect of the knowledge of essential facts giving rise to cause of action as pleaded will have to be accepted as correct at the stage of consideration of the application under Order VII Rule 11 of the Code. The Supreme Court laid down in paragraph 5 as follows:-

“5. Rejection of the plaint
under Order VII Rule 11 of the CPC is



a drastic power conferred in the Court to terminate a Civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

14. Mr. Arora has rightly placed reliance on the Supreme Court decision in case of **Chhotanben Vs. Kiritbhai Jalkrushnabhari Thakkar**(supra), wherein a three Judge Bench of Supreme Court has, in no uncertain terms, held that



what is relevant for considering the matter in issue in the context of the application under Order VII Rule 11(d) of the Code is to examine the averments in the plaint, which is required to be read as a whole. The Court emphatically held that defence available to the defendants or the plea taken by them in the written statement or any application filed by them cannot be the basis to decide an application under Order VII Rule 11 (d) of the Code. Only the averments in the plaint are germane for consideration of an application under Order VII Rule 11 of the Code, the Supreme Court has held in case of **Chhotanben**.

15. In my opinion, the Supreme Court's decision in case of **T. Arvandandam Vs. T.V. Satyapal** (supra), is of no help for the petitioners. In the said case the Supreme had found the plaint to be vexatious and merit less in the sense of not disclosing a clear right to sue. The said decision in my opinion, does not help the contentions made on behalf of the petitioners.

16. Applying the principles of law clearly laid down in a series of decisions dealing with application of Order VII Rule 11 of the Code, it can be easily discerned that only the averments in the plaint are required to be gone into and no defence available to the defendants or plea taken by them in the



written statement or any application filed by them can be the basis to decide an application under the said provision. The averments made in the plaint do disclose cause of action. It is different matter as to whether the plaintiff succeeds to establish his case as pleaded in the plaint on both counts for the purpose of decision by the trial Court, while adjudicating the issues framed in this regard.

17. The impugned order does not suffer from any legal or factual infirmity, requiring this Court’s interference.

18. This application is, accordingly, dismissed.

19. Interlocutory applications stand disposed of.

(Chakradhari Sharan Singh, J)

arun/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.01.2020
Transmission Date	N/A

