

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.241 of 2016

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Raj Kumar Singh, Son of late Rameshwar Prasad Singh, Resident of Basant,
Block Bal, Police Garkha, District- Saran at Present Mohalla Sahebganj,
Butanvari Graha, Pragana, Manjhi, P.S. Chapra Nagar, P.O. Chapra, District-
Saran, Pin Code- 841301

... .. Petitioner/s

Versus

- 1.1. Uma Devi, Wife of Late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.2. Pradip Kumar, Son of late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.3. Dilip Kumar, Son of late Bachcha Prasad Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.4. Vijay Kumar, Son of late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.5. Ajay Kumar, Son of late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.6. Sanjay Kumar, Son of late Bachcha Prasad Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.7. Sunil Kumar, Son of late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.8. Rakesh Kumar, Son of late Bachcha Prasad, Resident of Mohalla- Sahebganj
(Chhapra), P.O. Chhapra, P.S. Chhapra Nagar, Distt. Saran.
- 1.9. Mina Kumari, D/o late Bachcha Prasad, W/o late Prabhakar Nayak, Resident
of Mohalla- Dalsinghsarai, P.O. and P.S. Dalsinghsarai, District- Samastipur.
2. Raj Kumar Prasad, Son of late Harinat Prasad, Resident of Mohalla-
Sahebganj, Chapra, P.O. Chapra, P.S. Chapra Nagar, District- Saran, Bihar,
Pin - 841301
3. Nand Kumar Prasad, Son of late Harinat Prasad, Resident of Mohalla-
Sahebganj, Chapra, P.O. Chapra, P.S. Chapra Nagar, District- Saran, Bihar,
Pin - 841301
4. Raj Kishore Prasad, Son of late Harinat Prasad, Resident of Mohalla-
Sahebganj, Chapra, P.O. Chapra, P.S. Chapra Nagar, District- Saran, Bihar,
Pin - 841301

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Adv. Mr. Amish Kumar, Adv. Mr. Shankar Kumar Choudhary, Adv. Mr. Anjani Kumar, Adv. Mr. Abhishek Anand, Adv.
For the Respondent/s	:	Mr. J.S. Arora, Sr. Adv. Mr. Manoj Kumar, Adv.



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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-02-2020

The opposite parties have filed a suit for eviction giving rise to Eviction Case No. 01 of 2015, which is pending in the court of learned Munsif-I, Chapra (Saran).

2. The petitioner is the tenant of the suit premises. He had filed an application under Order 7 Rule 11 of the CPC, which has been rejected by the Court below by an order dated 23.06.2016, which is under challenge in the present civil revision application.

3. Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of the petitioner has taken me to the impugned order straightway to contend that the only reason for rejecting the petitioner's application Order 7 Rule 11, as assigned by the court below in the impugned order, is that the same was filed after filing of the written statement. He has submitted that the grounds taken by the petitioner-defendant before the court below in his application under Order 7 Rule 11 have not at all been gone into by the court below. According to him, if the averments made in the plaint are taken to be correct on its face value, the suit is either barred by the provisions of Prohibition of Benami Transaction Act, 1985 or otherwise, the plaintiffs have not been able to show their



prima facie title to claim their status as the petitioner's landlord, which is a condition precedent for maintaining an eviction suit.

4. He has relied on Supreme Court's decision in case of ***Samar Singh vs. Kedar Nath Alias K.N. Singh*** reported in ***AIR 1987 SC 1926*** and a decision of this Court in case of ***Bijendra Prasad and others vs. Duleshwari Devi and others*** reported in ***AIR 1998 Patna 122*** to contend that an application under Order 7 Rule 11 can be maintained at any stage and even after filing of the written statement. He has submitted that, as a matter of fact, in the present case, the application under Order 7 Rule 11 was filed simultaneously with the application for leave to contest.

5. Mr. J.S. Arora, learned Senior Counsel appearing on behalf of the contesting opposite parties, has submitted that the application under Order 7 Rule 11 filed by the petitioner lacks *bonafide* and the same has been filed only to protract the litigation pending before the court below. He has submitted that the plaintiff before the court below is admittedly one of the partners of a firm, which, subsequently, stood dissolved, who could very well maintain the eviction suit, being one of the partners of the firm. He has relied on the decisions of this Court in case of ***Padam Singh Jain vs. Chandra Brothers and others (AIR 1990 Patna 95)*** and in case of ***Kalawati Tripathi and others vs.***



Damayanti Devi and others (AIR 1993 Patna 1). He has submitted that the questions which have been raised in the petitioner's application under Order 7 Rule 11 for rejection of the plaint are such matters which can be decided after framing of issues and adduction of evidence. He has further submitted that even if the impugned order dated 23.06.2016 suffers from any technical illegality, this Court, in the interest of justice, may not interfere with the same, keeping in mind the fact that the averments made in the plaint do contain averments in support of the plaintiff's title and his status as landlord. Mr. Arora has also submitted that the firm is not a juristic person and it is simply a collective name of the partners of the firm, who are the owners of the said property.

6. I have carefully perused the order impugned dated 23.06.2016. Mr. Verma is correct in his submission that the only reason, which has been assigned in the impugned order for rejecting the application under Order 7 Rule 11, is that the same was filed after filing of the written statement. The Supreme Court's decision in case of ***Samar Singh*** (supra) has rightly been relied on behalf of the petitioner wherein it has been expressly held that Order 7 Rule 11 does not place any restriction or limitation on the exercise of the court's power and it does not either expressly or by



necessary implication provide that powers under Order 7 Rule 11 should be exercised at a particular stage only. The Supreme Court has clearly laid down that in the absence of any restriction placed by any statutory provision, it is open for the Court to exercise the said power under Order 7 Rule 11 at any stage.

7. Similar view has been taken by this Court in case of ***Bijendra Prasad*** (supra), relevant portion of which is being reproduced hereinbelow :-

“8.A perusal of the provisions of Order 7, Rule 11 of the Code do not envisage any limitation or restrictions on the exercise of Court's power at any stage. Besides this, it does not either expressly or by necessary implication provide that jurisdiction under Order 7, Rule 11 of the Code should be exercised at a particular stage only. Therefore, in the absence of any statutory restrictions placed under Order 7, Rule 11 of the Code it is open to the Court to exercise its jurisdiction under this provision at any stage, may be during the trial or at the appellate stage. No doubt, such objections are expected to be raised at the very threshold so that unnecessarily Court's time may not be wasted, but, all the same, if the plea is raised in the written statement and ultimately the Court decides the issue in favour of the defendants in non-suited the plaintiffs even after the settlement of the issues or trial, it cannot be deemed that at subsequent stage the trial Court or the



appellate Court does not get any jurisdiction. In Samar Singh v. Kedarnath, AIR 1987 SC 1926, it has been ruled that plaint can be rejected even alter the stage of settlement of issues etc.....”

8. Since there has been no application of mind by the court below on the petitioner’s application under Order 7 Rule 11, in the light of the Supreme Court’s decision and the decision of the High Court, as noted above, the same requires interference. The impugned order is accordingly set aside. The court below is directed to pass an order afresh on the petitioner’s application under Order 7 Rule 11 on its own merits without being prejudiced by any observation made in the present order.

9. Since the eviction suit is pending since 2015, the court below is directed to pass fresh order on the petitioner’s application under Order 7 Rule 11 within a period of two months from the date of receipt/ production of a copy of this order.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2020
Transmission Date	NA

