

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No. 6 of 2018

Dr. Sanjay Kumar

... .. Petitioner/s

Versus

Smt. Kiran Rani

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr. Sanket, Advocate
For the Respondent/s	:	Mr. Shashi Shekhar Dvivedi, Sr. Advocate Mr. Parth Gauray, Advocate Mr. Ashutosh Kr. Pandey, Advocate Mr. Anshu Raj Singh, Advocate Ms. Shilpa, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 12-12-2022 This civil revision application has been filed against the order dated 09.11.2022 passed in Title Partition Suit No. 2011 of 2014 by the learned Court of Sub Judge Vth, Patna whereby the petition under Order 7 Rule 11 has been dismissed by the trial court.

Heard learned counsel for the petitioner-defendant and Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing on behalf of the opposite party-plaintiff.

Aforesaid suit has been filed by the plaintiff, sister of the petitioner for partition of the suit property and to carve out her share.

Learned counsel for the petitioner submits that the suit is barred under Section 14 of the Criminal Law



(Amendment) Ordinance Act, 1944 and it is further submitted that the suit is also filed without any cause of action.

The defendant-petitioner filed a petition under Order 7 Rule 11 (a) (d) of the Civil Procedure Court which reads as under:-

“The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action.

(d) Where the suit appears from statement in the plaint to be barred by any law.”

Learned counsel for the plaintiff-opposite party submits that this application filed by the petitioner-defendant is not maintainable as said application is not within the perview of Order 7 Rule 11 (a) (d). He submits that the Court is only to examine the averments in the aforesaid application, averments made and pleas taken by the defendant in the written statement or any application would be irrelevant. Learned counsel for the opposite party is relying upon the decision of the Hon'ble Supreme Court reported in (2012)8 SCC 701, perused the plaint of partition suit no. 2011 of 2014. There is no any averment made in the plaint with regard to any bar or attachment raised by the defendant-petitioner. Further, with regard to the objection raised by the petitioner regarding absence of cause of action in a partition suit is only the claim of partition of share has to be



seen. It is stated in paragraph 10 of the plaint that the date of last demand of partition was made on 30.11.2014. Hence both the objection raised by the petitioner is not present in the plaint.

Learned counsel for the petitioner submits that all the parties received the notice in criminal proceeding bearing Cr. Misc. No. 59 of 1998 and they were aware of the said proceeding.

In the aforementioned facts and circumstances as well as citation relied upon by the plaintiff-opposite party, it is well-settled law laid down by the Supreme Court that only plaint has to be seen and nothing else. In the aforesaid facts and circumstances, the Civil Revision is dismissed.

(Khatim Reza, J)

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