

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.116 of 2019

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Rajeev Kumar Singh, S/o Late Mahendra Singh, R/o Village- Govindchak,
P.S. Sonpur, District-Saran.

Defendant 1st Set/ Petitioner

Versus

1. Shankar Singh
2. Mahavir Singh, both sons of Late Mahendra Singh
3. Rinki Singh
4. Raj Kumari, both daughters of Late Mahendra Singh,
All R/o Mohalla- Jail Road, Shahpur, Gorakhpur (Bungalow no. 85), P.S.
Kauwa Bagh (Out House), Gorakhpur, District- Gorakhpur (U.P.)

Plaintiffs/Opposite Parties 1st Set.

5. Kameshwar Singh
6. Shiv Jee Singh
7. Ravindra Singh, all sons of Nagina Sah
8. Shila Devi, W/o Ravindra Singh,
All R/o Village- Govindchak, P.S. Sonpur, District-Saran

Defendant 2nd Set/Opposite Parties 2nd Set

9. The General Manager, North Eastern Railway, Gorakhpur, P.S. Gorakhpur,
District- Gorakhpur (Uttar Pradesh)

Defendant 3rd Set/Opposite Party 3rd Set

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 18-08-2022

This Civil Revision has been filed under Section 115 of the Code of Civil Procedure, 1908 against the order dated 08.05.2019 passed by learned Sub-Judge XIVth, Saran at Chapra in Title Suit No. 275 of 2011 whereby and whereunder the petition dated 07.09.2018 filed by the petitioner/defendant First Set under Order VII Rule 11 of the CPC has been rejected.



2. Plaintiffs /opposite parties 1st Set had filed Title Suit No. 275 of 2011 in the court of learned Sub-Judge 1st , Saran at Chapra seeking relief for declaration that judgment and decree dated 12.07.2010 and 23.03.2010 respectively passed in Title Suit No. 130 of 2009 by the learned Sub-Judge 1st, Saran at Chapra is illegal, showy, forged and not binding upon them.

3. The case of the plaintiffs is that Mahendra Singh was an employee in Railway at Gorakhpur on the post of Khalasi and during subsistence of his service period he died on 01.04.2001. Initially Mahendra Singh was married with one Gangajali Devi but out of the said wedlock they have no issue, as such Mahendra Singh solemnized marriage with one Rita Devi, mother of the plaintiffs as per Hindu Rituals on 13.12.1998 and accepted the plaintiffs who are sons and daughters of Rita Devi from her earlier marriage as his issue. The further case of the plaintiffs is that when they have made a claim before the Railway Authorities claiming death-cum-post retiral claim of late Mahendra Singh then they came to know that defendant no. 1 i.e. Rajiv Kumar Singh petitioner herein has filed a copy of judgment and decree dated 12.07.2010/ 23.07.2010 passed in Title Suit No. 103/2009 whereby in the said judgment it was held that defendant no. 1 is the adopted son of late Mahendra Singh.

4. When the said fact came into knowledge of the plaintiffs they got inspected the aforesaid record and came to know about



forgery played by the defendants against them and thereby they filed the aforesaid suit.

5. The said suit was admitted for hearing and defendant after appearance filed W.S. on 02.08.2011 and after considering rival contentions of the parties issues were framed in the suit on 08.04.2015 in which maintainability of the suit including on the ground of cause of action to the plaintiffs is also involved. The evidence of the plaintiff is going on and in the meantime on 07.09.2018 petitioner filed a petition under Order VII Rule 11 of the CPC which has been dismissed vide impugned order dated 08.05.2019. Hence, this Revision Petition filed on behalf of the defendant 1st Set.

6. Learned counsel for the petitioner submits that the impugned order is bad in law as well as on facts and as such the same is fit to be set aside. He has submitted that learned Trial Court has failed to appreciate that the present suit has been filed for annulment of exparte judgment and decree for which the aggrieved party has got three remedies i.e. by way of filing petition under Order 9 Rule 13 or by way of filing regular appeal under Section 96 of CPC or seek review under Section 114 of CPC. But without exhausting the aforesaid three remedies he has filed the present suit. He has further submitted that plaintiffs have not pleaded that defendant has played any sort of fraud for obtaining judgment and decree in Title Suit No.



103 of 2009 and the plaint does not disclose that any fraud has been committed in obtaining the judgment and decree under the challenge in the suit. Accordingly, the plaint does not disclose any cause of action for filing the said suit and it is also well settled that power under Order VII Rule 11 CPC can be exercised by the Court at any stage. He has further submitted that since no cause of action arose in the suit, accordingly, the suit deserves to be rejected under Order VII Rule 11 CPC. Accordingly, he prayed to set aside the impugned order.

7. From perusal of the impugned order, it appears that the learned court below rejected the petition of the petitioner under Order VII Rule 17 CPC on the ground that:-

“It appears from the pleading of the plaintiff that there is a valid cause of action to file the suit as mentioned in the plaint. So far as limitation is concerned, it is mix question of fact and law and the same is not to be decided at this juncture unless and until evidence will be produced by the parties to the suit. In the light of above facts and circumstances, there is no merit in the petition of the defendant, so the same is to be dismissed”.

8. The Civil Procedure Code, 1908 provides for the remedy of rejection of plaint under Order VII Rule 11, on certain specifically stated grounds. Rejection of plaint weeds about frivolous, vexatious and improper plaint at the very outset, thus, saving judicial time and resources. The entire purpose of conferment of such powers under Order VII Rule 11 is to ensure that a litigation,



which is meaningless and bound to prove abortive is not permitted to occupy the time of courts. Such a remedy is necessary to put an end to the sham litigation, so the further judicial time is not wasted.

9. Order VII Rule 11 (d) of CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. The law is well settled that the Trial Court can exercise the power under Order VII Rule 11 CPC at any stage to the suit i.e. before registering the plaint or after issuing summons to the defendant or before the conclusion of the trial. For the purpose of deciding an application under Order VII Rule 11 (d), the averments in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. It is duty of the court to scrutinize the averments/pleas in plaint.

10. In the present case, the plaintiff has filed the Title Suit No. 275 of 2011 for declaration to the effect that judgment and decree passed in Title Suit No. 103/2009 by the court of learned Sub-Judge I, Chapra is false and fabricated and not binding upon him. The learned Trial Court observed that from the pleading of the plaintiff there is valid cause of action to file the suit as mentioned in the plaint and there is also issue framed in the suit on the grounds of maintainability. It is also observed that so far limitation is concerned, it is mix question of fact and law and the same is not to be decided at



this juncture unless and until evidence will be produced by the parties to the suit.

11. Having heard learned counsel for the petitioner and considering the material available on record, this court does not find any infirmity or jurisdictional error in the impugned order and reasoning given by the learned trial court cannot be said to be suffering from any patent illegality or irregularity requiring any interference by this Court in its revisional jurisdiction.

12. Accordingly, this Revision Petition is dismissed as being devoid of merit.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
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