

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.20 of 2020

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Ramayan Yadav Son of Mahatma Yadav @ Mahatam Yadav Resident of Village Tabkal Rai ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri, District-Buxar, Presently residing at 124C Chandrashekhar Nagar, Ballia, U.P. 277001.

... .. Petitioner

Versus

1. Khelu Yadav Son of Moti Lal Yadav Resident of Village Tabkal Rai Ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri District- Buxar.
2. Sukh Nandan Yadav Son of Late Jagdeo Yadav Resident of Village Tabkal Rai Ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri District- Buxar.
3. Mahatma Yadav Son of Late Bali Yadav Resident of Village Tabkal Rai Ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri District- Buxar.
4. Bhorik Yadav Son of Mahatma Yadav Resident of Village Tabkal Rai Ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri District- Buxar.
5. Manji Yadav Son of Mahatma Yadav Resident of Village Tabkal Rai Ke Dera, P.O.- Chhotaka Rajpur, P.S.- Simri District- Buxar.

... .. Opposite Parties

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Appearance :

For the Petitioner : Mr. Ramadhar Singh, Advocate
For the Opposite Parties : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 13-02-2023 Heard learned counsel for the petitioner.

This Civil Revision application has been filed against the order dated 29.11.2019, passed by the learned Sub-Judge Ist, Dumraon in Title Suit No. 201 of 2018, whereby the learned Trial Court rejected the petition dated 22.02.2019, filed by the defendant-petitioner under Order VII Rule 11 of the Code of Civil Procedure.

Learned counsel for the petitioner submit that the plaintiff No. 1 namely Khelu Yadav and plaintiff No. 2 namely



Sukh Nandan Yadav have got no right, title and interest to file the instant suit and in absence of Sushila Devi, who is the necessary party in the eye of law, the plaintiffs have no valid cause of action. It is submitted that the instant case cannot be proceeded in absence of necessary and proper parties, hence, the Trial Court erred in law and rejected the petitioner's application. It is further submitted that learned lower court wrongly mentioned Section 120 of the Indian Evidence Act, and is not required, wrongly rejecting the application filed under Order VII Rule 11 of the Code of Civil Procedure.

It is expedient to analyse the provision of law in this regard:-

Provision of ***Order VII Rule 11 of Code of Civil Procedure*** reads as under:-

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

(a). where it does not disclose a cause of action;

(b). where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c). where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the



requisite stamp-paper within a time to be fixed by the Court, fails to do so;

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

¹*[(e). where it is not filed in duplicate;]*

²*[(f). where the plaintiff fails to comply with the provisions of rule 9:]*

³*[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”*

The contention of the petitioner is that Sushila Devi was a necessary party to the suit and she being a necessary party has not been impleaded in the suit. On this ground the petitioner filed an application under Order VII Rule 11 of the Civil Procedure Code for rejection of the plaint.

On the analysis of Order VII Rule 11 of the Civil Procedure Code there is no mention of rejection of plaint on the basis of misjoinder or non-joinder of parties.

So far the question of cause of action is concerned that



issue is also available in the plaint, on its reading it is clearly manifest that discernible cause of action exists in the plaint and therefore the application filed under Order VII Rule 11 of the Civil Procedure Code is misconceived.

In the aforesaid facts and circumstances, this Court does not find any illegality in the impugned order of the learned Court below nor does it find any jurisdictional error in the same. Accordingly, this Civil Revision is dismissed.

(Khatim Reza, J)

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