

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No.24 of 2020**

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Jagdish Pandey, Son of Late Ram Sakal Pandey, Resident of Village- Ameya,  
P.S.- Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

Dr. Mahima Pandey, Son of Late Ramsakal Pandey, resident of Village-  
Ameya, P.O. Mahuawan, P.S.- Kateya, District- Gopalganj and 8 Lessingham  
Road, Widness, Cheshire WA 89 FU, England.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Prince Kumar Mishra, Advocate

For the Respondent/s : Mr. Sanjay Kumar Pandey No.5, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL ORDER**

7      14-09-2023                      Heard learned counsel for the parties.

2. This Civil Revision application has been filed against the order dated 28.01.2020 passed in Partition Suit No. 144 of 2012 by learned Sub-ordinate Judge-IX, Gopalganj whereby and whereunder the application of petitioner/defendant seeking rejection of plaint has been rejected.

3. The brief facts of the case, according to the petition, are that plaintiff/respondent filed Partition Suit No. 144 of 2012 for getting his share in ancestral properties in which defendant filed his written statement taking various objection including that plaintiff has been living in United Kingdom since last 45 years and practicing there and he is now British Citizen and the



ancestral property has already been partitioned between plaintiff and defendant long back and they are living separately. The issues were framed and evidence on behalf of plaintiff have already been closed and the suit is pending for defendant evidence. The petitioner filed a petition dated 29.08.2019 for rejection of plaint on the grounds inter-alia that plaintiff has given his wrong address and also has not disclosed the fact that he is resident of England and thus concealed this fact and violated the provision of Order 7 Rule 1 (b) of C.P.C. The plaintiff filed rejoinder to the same and stated that he is Overseas Citizen of India Card holder and he has given his ancestral address which is not in violation of Order 7 Rule 1(b) C.P.C. The learned Court below vide the impugned order rejected the said petition of the petitioner.

4. Learned counsel for the petitioner submits that the learned Court below failed to appreciate that plaintiff has suppressed correct residential and nationality particulars and has given wrong residential address and thus violated the mandatory provisions of Order 7 Rule 1(b) C.P.C. and thus suit is liable to be rejected under Order 7 Rule 11 C.P.C. He further submits that the learned Court below failed to appreciate that in absence of true particulars about the plaintiff, the suit is not maintainable



and barred by the law.

5. On the other hand, learned counsel for the respondent submits that the petition of the petitioner for rejection of plaint under Order 7 Rule 11 C.P.C. is misconceived and devoid of any merit and the learned Court below has rightly rejected the said petition. Further, he submits that at the stage of exercise of power under Order 7 Rule 11(d) C.P.C., the Court has to examine the plaint and the plea taken by defendant in written statement would be irrelevant. The suit is not barred by any law and there is no illegality in the impugned order which requires any interference by this Court.

6. The law is well settled that only the averments in the plaint can be looked into while deciding the application under Order VII Rule 11 C.P.C. The broad principles on issue of rejection of plaint under Order VII Rule 11 (d) C.P.C. can be culled out:

*(i) The averments made in plaint are germane have to be taken as correct;*

*(ii) The whole plaint has to be read not informal but in a meaningful manner;*

*(iii) No part of defence or evidence is to be considered;*

*(iv) Being summary in nature, the Court should exercise this jurisdiction only*



*when it becomes absolutely certain that the litigation is doomed to fail.”*

7. The Hon’ble Supreme Court in the case of **P.V. Guru Raj Reddy Vs. P. Neeradha Reddy & Anr. 2015 (2)PLJR (Supreme Court) 205** in Paragraph 5 and 6 held as follows:

*“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 there of the suit appears to be barred under any law the plaint can be rejected. In all other situation, the claims will have to be adjudicated in the course of the trial.*

*In the present case, reading the plaint as a whole and proceedings 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 claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the 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 the stand of the defendants in the written statement would be altogether irrelevant.”*

8. Having heard the learned counsel for the parties and on perusal of record, it appears from the impugned order that the learned Court below observed that whether the petitioner is an Indian Citizen or not or whether he lived in India 182 days or not is a matter of trial. The learned Court below in the impugned order given reasons for rejecting the application and considered the provision under Order 7 Rule 1 (b) C.P.C., Section 83 C.P.C. and the facts and circumstances of the case.

9. In the light of the above discussion and in view of the settled legal provision as mentioned above, in my considered opinion there is no illegality in the impugned order for interference by this Court.

10. In the result, this Civil Revision Application is dismissed. There shall be no order as to costs.

**(Sunil Dutta Mishra, J)**

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