

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.17 of 2017

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Jitendra Kumar Singh Son of Late Brahmadeo Singh, resident of village - Mahuli, P.S. Phulwarisharif now P.S. Parsa Bazar, District – Patna

... .. Petitioner

Versus

1. Krishna Kumar Singh @ Lal Babu Singh andors Son of Late Brahmdeo Singh,
2. Kumar Manikant, Son of Krishna Kumar Singh,
3. Ravikant Kumar, Son of Krishna Kumar Singh,
4. Muskan Sinha minor ,
5. Ansh Raj Minor , Both minor son and daughter of Kumar Manikant, under the guardianship of their father and next frien
6. Ayush Raj,
7. Baby Kittu, Both minor son and daughter of Ravikant under the guardianship of their father and next friend Ravik
8. Bibha Kumari, Wife of Rajeev Kumar, daughter of Sri Krishna Kumar Singh, resident of village - Nanda Bigha, P.S. Harnaut, District - Nalanda
9. Gaurav Kumar,
10. Nidhi Kumari, Both minor son and daughter of Jitendra Kumar Singh, resident of vill. - Mahuli, P.S. Parsa Bazar, Distt. - Patna

... .. Opposite Parties

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Appearance :

For the Petitioner : Mr. Neeraj Kumar, Advocate
For the Opposite Parties : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 29-03-2023 Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. This Civil Revision application has been filed against the order dated 01.06.2016, passed by learned Sub-Judge-1, Patna, whereby petition filed by petitioner under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure has been



rejected.

3. Learned counsel for the petitioner submits that the suit is barred by *Res-Judicata* because partition has already taken place in Title (Partition) Suit No. 183 of 1993/06 of 2000.

4. The partition bearing Title (Partition) Suit No. 1990 of 2014 has been filed by the plaintiff-opposite party No. 1, wherein it is contended that the properties left by Brahmdeo Singh (father of the petitioner and opposite party No. 1), which have been inherited by both the parties jointly on his death alongwith properties still left joint and never made subject matter of partition earlier.

5. Learned counsel for the opposite party No. 1 submitted that after the death of Brahmdeo Singh (father of the petitioner and opposite party No. 1), properties in his share have not been partitioned by metes and bounds. It is further submitted that the petitioner has not disclosed the date of amicable partition in paragraph No. 12 of the instant Civil Revision application and also stated that he got his name mutated in the revenue records and getting rent receipts. Learned counsel for the opposite party No. 1 further submitted that defendant-petitioner himself admitted that the properties described in Schedule II of the plaint were allotted to Brahmdeo Singh, who



died intestate and further submitted that his properties were never partitioned among his legal heirs.

6. Learned Trial Court after examining the circumstances of the case and perusing the plaint, has held that principle of *res-judicata* is not applicable in the instant suit as the father of the plaintiff No. 1 and defendant No. 1, died in the year, 2006 and Schedule II property was admittedly allotted property of Brahmdeo Singh (deceased-father) by the deed of partition of the year 1985 [Ext. A/3 in Title (Partition) Suit No. 183 of 1993/06 of 2000]. Further, admittedly Brahmdeo Singh died intestate and his properties were never partitioned among his heirs. Similarly, Schedule-III property of the plaint were not made subject matter of Title (Partition) Suit No. 183 of 1993/06 of 2000.

7. In the case of ***P.V. Guru Raj Reddy Vs. P. Neeradha Reddy*** reported in ***(2015) 8 SCC 331***, the Hon'ble Supreme Court has held that while exercising of power under Order VII Rule 11 of the Code of Civil Procedure, only averments in the plaint have 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 7, Rule 11 Code of Civil Procedure, the stand of the



defendants in written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments made therein *ex-facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected.

8. After considering the submission and perusal of the impugned order, it is manifest that the suit has been filed by the plaintiff for partition of plaintiff's 8 Anna share in the suit property described in Schedule-II and Schedule-III of the plaint and further after granting aforesaid relief, a separate thakhta of plaintiff's 8 Anna share out of the suit property be carved out by Survey Knowing Pleader Commissioner. However, another relief has been prayed for restraining the defendants from alienating, encumbering and changing the physical feature of suit land. It is now well settled that while considering the prayer for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, the averment made in the plaint are to be taken. The plaintiff has asserted to be property in suit is joint property which was allotted to his father by Title (Partition) Suit No. 183 of 1993/06 of 2000, moreover, schedule-III property of the plaint was not made subject matter of partition bearing Title (Partition) Suit No. 183 of 1993. It is, therefore, obvious that the



plaint could not have been rejected as prayed by defendant under the provisions Order 7, Rule 11 of the Code of Civil Procedure.

9. In the aforesaid facts and circumstances, this Court, therefore, does not find that the learned court below has committed error of jurisdiction and illegality in passing the impugned order.

10. Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

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