

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.258 of 2016

1. Shankar Singh Son of Sri Siaram Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
2. Shekhar Singh, Son of Sri Siaram Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
3. Sudhir Kumar Singh, Son of Sri Ram Bilash Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
4. Randhir Kumar Singh, Son of Sri Ram Bilash Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
5. Jai Prakash Singh, Son of Sri Kailash Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
6. Ajit Singh, Son of Sri Kailash Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.

... .. Petitioners

Versus

- 1.1. Laliya Devi W/o Late Satya Narayan Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
- 1.2. Meena Devi, Wife of Late Tirath Singh Resident of Village- Bishanpura (Bahornabag), P.O.- Bishanpura, P.S.- Bihta, District- Patna.
2. Dineshwar Singh, Son of Late Ram Janam Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
3. Bhim Sen Singh, Son of Late Bindeshwari Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
5. Ram Ji Singh, Son of Late Bindeshwari Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
6. Sobh Nath Singh, Son of Ramesh Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
7. Sidh Nath Singh, Son of Late Rajendra Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
8. Ram Bilash Singh, Son of Late Parmeshwar Singh Resident of Mohalla- Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
- 9.1. Rohini Devi, Daughter of late Kailash Singh and wife of Gautam Singh Resident of Village Bishanpura, P.S.- Bihta and District- Patna.
10. Most. Draupadi Devi widow of Late Siya Ram Singh, resident of Mohalla- Yarpur Rajputana Tola Shiv Jee Path, PS-Gardanibagh, PS-G.P.O., District- Patna.
11. Sheo Pukar Singh, Son of Late Bhola Singh Resident of Mohalla- Yarpur



- Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
12. Mostt Meera Devi widow of Late Rana Pratap Singh, resident of Mohalla-
1. Yarpur Rajputana Tola, Shiv Jee Path, PS-Gardanibagh, PS-G.P.O., District-
Patna.
 13. Manoj Kumar Singh, Son of Satya Narayan Singh Resident of Mohalla-
Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO,
District- Patna.
 14. Binay Kumar Singh, Son of Satya Narayan Singh Resident of Mohalla-
Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO,
District- Patna.
 15. Jawahar Singh, Son of Late Rajeshwar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 16. Dhiraj Singh, Son of Late Rajeshwar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 17. Anoop Singh, Son of Late Rajeshwar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 18. Sujit Singh, Son of Late Rajeshwar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 19. Suraj Singh, Son of Dineshwar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 20. Subham Singh, Son of Bhimesh Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 21. Purshotam Kumar Singh, Son of Sobh Nath Singh Resident of Mohalla-
Yarpur Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO,
District- Patna.
 22. Uttam Kumar Singh, Son of Sobh Nath Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 23. Anuj Kumar, Son of Sidh Nath Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 24. Akshay Kumar, Son of Sidh Nath Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 25. Amar Singh, Son of Sheo Pujar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 26. Amit Singh, Son of Sheo Pujar Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 27. Saurav Singh, Son of Rana Pratap Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 28. Gaurav Singh, Son of Rana Pratap Singh Resident of Mohalla- Yarpur
Rajputana, Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 29. Sonu Singh, Minor, Son of Ram Ji Singh Under the guardianship of their
natural father namely Ram Ji Singh, Resident of Mohalla- Yarpur Rajputana,
Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.
 30. Rohit Singh, Minor, Son of Ram Ji Singh Under the guardianship of their
natural father namely Ram Ji Singh, Resident of Mohalla- Yarpur Rajputana,



Tola Shiv Jee Path, P.S.- Gardanibagh, PO- GPO, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Madan Mohan, Advocate Mr. Ritik Shah, Advocate Mr. Rahul Raj, Advocate
For the Respondent/s	:	Mr. Kamlesh Kumar, Advocate Mr. Kahkashan Alam, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :13-09-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 07.04.2014 passed by the learned Sub. Judge-IV, Patna in Title Suit No. 250 of 2010, whereby and whereunder the learned trial court held that the suit was barred with respect to other suit plots except only one plot under the provision of Section 11 of the Code of Civil Procedure, 1908 (in short 'the Code'). Further quashing of order dated 21.01.2016 passed by learned Sub. Judge-IV, Patna in Title Suit No. 250 of 2010 has also been sought whereby and whereunder the learned trial court dismissed the petition dated 20.05.2014 filed under Order 47 Rule 1 r/w Section 114 of the Code.

02. Briefly stated, the facts of the case are that the petitioners are plaintiffs and they have filed Title Suit No. 250 of 2010 seeking following relief(s):-

“i. On adjudication a decree of partition



of eight paise out of sixteen anna of the plaintiffs share in Schedule-1 property be passed in favour of the plaintiffs and against the defendants.

ii. On preparation of the preliminary decree a Survey knowing pleader commissioner be appointed to carved out the separate takhta of the plaintiff and on respect of the commission report a final decree be prepared and on preparation of final decree the plaintiff be put in possession over their respective takht through the process of the court.

iii. During the pendency of the suit the defendant be restrained not to transfer, alienate and encumber the suit properties to the any stranger and further the performa defendant be restrained by an order of temporary injunction not to disturb the peaceful enjoyment of tenant and leaseholder or to get any forceful eviction.

iv. The cost of the suit be awarded to the plaintiff and against the defendants.

v. Any other relief or reliefs be awarded in favour of the plaintiff and against the defendants.”

In the said title suit, after notice the defendants/respondents appeared and some of the respondents filed a petition dated 08.12.2010 under Section 11 of the Code mentioning therein that the suit was barred by principle of *res judicata* as the father and uncle of the plaintiffs have lost the earlier partition suit bearing Partition Suit No. 193 of 1975 up to the Hon'ble Supreme Court and the decision was binding upon



the plaintiffs. A rejoinder dated 08.10.2011 was filed by the plaintiffs. After hearing the parties, the learned trial court vide order dated 07.04.2014 held that the said suit was partially barred under the provision of Section 11 of the Code because except for plot no. 330, all the other suit plots had been subject matter of earlier suit and the suit will proceed only with regard to Plot No. 330 and not for any other plots as the same was barred under Section 11 of the Code. After passing of the order dated 07.04.2014, the plaintiffs filed a review petition under Order 47 Rule 1 r/w Section 114 of the Code. The said review petition was rejected vide order dated 21.01.2016 by the learned trial court. The aforesaid two orders dated 07.04.2014 and 21.01.2016 have been challenged in the present petition.

03. Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the plaintiffs/petitioners submitted that the orders of the learned trial court is not sustainable as the same has been passed without consideration of the averment made in the plaint. The learned trial court has failed to consider the fact that issue of *res judicata* is a mix question of law and facts and the learned trial court should have directed that the said issue will be tried along with other issues framed in the suit. The orders impugned tantamount to dismissal of the suit except for



Plot No. 330. Mr. Trivedi further submitted that there could not be part rejection of the plaint as the learned trial court has specifically held that except for Plot No. 330, the suit would not proceed against other plots of the suit land as the same was barred under Section 11 of the Code. Mr. Trivedi further submitted that the learned trial court should have been taken into consideration to all the contentions of plaintiffs in the impugned order but without doing so they have passed the orders.

Learned senior counsel relied on a decision of Hon'ble Supreme Court in the case of *Madhav Prasad Aggarwal v. Axis Bank Ltd.*, reported in *(2019) 7 SCC 158* on the proposition that there could not be part rejection of the plaint under Order 7 Rule 11 of the Code or that it could not be rejected against certain defendants and could proceed against other defendants. On the same propositions, Mr. Trivedi further referred to the decisions of Hon'ble Supreme Court in the case(s) of *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, reported in *(2018) 11 SCC 780*, *Dahiben v. Arvinbhai Kalyanji Bhanusali*, reported in *(2020) 7 SCC 366* and *Kum. Geetha & Ors. Vs. Nanjundaswamy & Ors.*, reported in *2023 INSC 964*.



Mr. Trivedi further submitted that the learned trial court has not considered the facts of the case and has not discussed the same while passing the impugned orders and the impugned orders are not speaking orders. Learned senior counsel further submitted that as the impugned orders virtually amounts to rejection of the plaint as it has been held to be barred against all the suit property except plot nos. 330, passing of such orders is not permissible. Thus, Mr. Trivedi submitted that orders dated 07.04.2014 and 21.01.2016 are not sustainable and the same be set aside.

04. Learned counsel appearing on behalf of the defendants/respondents vehemently contended that there is no infirmity in the impugned orders and the same is just and proper. Learned counsel further submitted that the common ancestor of the plaintiffs and defendants was one Ishri Singh and all the plaintiffs and defendants claimed their title through Ishri Singh. Learned counsel further submits that Title Suit No. 193 of 1975 was filed by the defendant no.7 and his father making all the other defendants parties in the said suit. Learned counsel further submitted that the learned trial court has specifically mentioned that the decree of Title Suit No. 193 of 1975 shows except for Plot No. 330 under Holding No. 56, all other plots were part of



the suit property of the decree. Similarly, learned trial court further held that the ancestors of the plaintiffs were parties in the Title Suit No. 193 of 1975 and in Title Appeal No. 84 of 1985 wherein it has been held that partition has already taken place between the descendants of Ishri Singh. Learned counsel further submitted that the learned trial court has rightly held that except for Plot No. 330, the suit could not proceeding for any other plots of the suit land as the same was barred under Section 11 of the Code. Learned counsel further submitted that the court was justified in striking of all the properties except Plot No. 330 and in this regard learned counsel relied on the decision of Hon'ble Supreme Court in the case of **K.K. Modi v. K.N. Modi**, reported in **(1998) 3 SCC 573** wherein the Hon'ble Supreme Court in Paras-42, 43 and 44 held as under:

“42. Under Order 6 Rule 16, the court may, at any stage of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure, (15th Edn., Vol. II, p. 1179, note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder courts



have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of the court on the basis of what is stated in the plaint.

43.The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase “abuse of the process of the court” thus:

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue



which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

Learned counsel for the respondents further submitted that the present case before the learned trial court is one such example of abuse of the process of the court and the learned trial court rightly refuse to proceed with other suit properties and the



same should be considered to be struck out under the provisions of Order 6 Rule 16 of the Code by its implication. Learned counsel further submitted that Hon'ble Supreme Court in the case of ***Ramchandra Dagdu Sonavane v. Vithu Hira Mahar***, reported in ***(2009) 10 SCC 273*** has reiterated the principle of *res judicata* and held that four conditions are required to be proved before *res judicata* can be given effect to. They are, that the litigating parties must be the same; that the subject-matter of the suit also must be identical; that the matter must be finally decided between the parties; and that the suit must be decided by a court of competent jurisdiction. All these conditions are present in the instant case. Thus, the learned counsel submitted that there is no infirmity in the impugned orders and the same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. The short question involved in the present petition is whether the learned trial court committed an error while partly allowing the petition filed by the some of the defendants under Section 11 of the Code and proceeded with the suit holding only Plot No. 330 to be suit property?

06. Apparently the defendants claimed that suit was



barred under the principles of *res judicata* and the plaint should be rejected under the provisions of Order 7 Rule 11 of the code though not specifically worded in the petition filed by the defendants. The impugned orders do not mention the plaint has been found fit to be rejected under Order 7 Rule 11 of the Code, though implication is the same as it appears from the impugned orders. However, when the defendants moved for dismissal of the suit on the ground of suit being barred under Section 11 of the Code, natural inference is that the defendants were claiming rejection of the plaint under Order 7 Rule 11(d) of the Code. Moreover, tone and tenor of the impugned orders show the plaint has not been found maintainable for the suit properties mentioned in the plaint except one for Plot No. 330, which means the plaint has been rejected for all the suit properties except Plot No. 330. The law on part rejection is no more *res integra*.

07. The Hon'ble Supreme Court in the case of ***Madhav Prasad Aggarwal*** (supra) in Para-12 held as under:

“12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as



presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.”

So, there could not be a part rejection of the plaint.

Further, Order 6 Rule 16 of the Code reads as under:

“16. Striking out pleadings.—*The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—*

(a) which may be unnecessary, scandalous, frivolous or vexatious, of

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

08. Bare reading of the aforesaid provision shows the court can strike out any pleadings if the aforesaid three conditions are satisfied. However, the facts of the present case



do not show matter was considered in this light and the impugned order dated 07.04.2014 has been passed under Order VI Rule 16 of the Code.

09. In the light of these facts and circumstances and discussion made here-in-before, since plaint could be rejected either in its entirety or not at all as held in *Madhav Prasad Aggarwal* (supra), the impugned orders could not be sustained and hence, the orders dated 07.04.2014 and 21.01.2016 passed by the learned Sub. Judge-IV, Patna in Title Suit No. 250 of 2010 are set aside and the matter is remanded to the learned trial court to pass orders afresh after taking into consideration all the contention of the parties within a month of receipt/production of a copy of this order.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	05.08.2024
Uploading Date	13.09.2024
Transmission Date	NA

