

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.35 of 2022

- 1.1. Manju Sharma Wife of Satyanarayan Sharma, Resident Mohalla - Azad Chowk, Bekapur, Police Station - Kotwali, Post Office - Munger, District - Munger.
- 1.2. Raubin Sharma, Son of Satyanarayan Sharma, Resident Mohalla - Azad Chowk, Bekapur, Police Station - Kotwali, Post Office - Munger, District - Munger.
- 1.3. Ajeet Sharma, Son of Satyanarayan Sharma, Resident Mohalla - Azad Chowk, Bekapur, Police Station - Kotwali, Post Office - Munger, District - Munger.
- 1.4. Reshma Kumari, Daughter of Satyanarayan Sharma, Resident Mohalla - Azad Chowk, Bekapur, Police Station - Kotwali, Post Office - Munger, District - Munger.

... .. Petitioner/s

Versus

1. Smt. Champa Devi W/o Sri Ramdeo Prasad, Resident of Mohalla Bari Bazar, P.S. Kotwali, P.O. Munger, Dist. Munger.
2. Sri Binod Kumar @ Mantro, S/o Late Jagdish Prasad Resident of Mohalla- P.C. Dutta Colony, P.S. Kotwali, P.O. Munger, District Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Harshwardhan Sahay, Advocate
For the Respondent/s	:	Mr. Surya Narayan Sah, Advocate
		Mr. Sharda Nand Mishra, Advocate
		Mr. Isha Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT

Date : 25-09-2025

Heard learned counsel on behalf of petitioners
and learned counsel for the respondents.

2. The present Civil revision has been filed against the order dated 12.04.2002 passed by learned Court of Munsif II, Munger in Eviction case No. 01 of 2016 whereby and where under petition under order 7 rule 11 filed by the



petitioners has been rejected.

3. Learned Counsel for the Petitioners submitted that the learned trial court committed illegality in refusing the application for rejection of plaint under order VII rule 11 of CPC, the impugned order is illegal, improper and against the mandatory provisions of law and is liable to set aside. The learned trial court failed to appreciate that plaintiff has got no valid cause of action for the suit on the basis of averments contained in the plaint as the plaintiff case is vexatious, meritless and completely based on irrelevant statements and frivolous facts thus the plaint ought to have been rejected under order-VII Rule-II (a) and order VII Rule (a) of code of civil procedure .

3.i. He further submitted that suit is barred under Section 54 of Transfer of Property Act, 1882 and Section 17 of Registration Act, 1908. He relied on the judgment of Apex Court in the case of ***Suraj Lamp and Industries Pvt.Ltd v State of Haryana and anr Air 2012 SC 206***

Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr.

(1977) 3 SCC 247, observed:



A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prosad v. Ram Mohit Hazra [1967]1 SCR

293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another...."

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In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [2004 (8) SCC 614] this Court held:

"Protection provided



under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the

property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party.”

It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. “Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter”.

3.ii He further submitted that agreement to sale



does not create right title and interest in the immovable property in the instant case the plaintiffs are neither receiving the rent nor they are entitled to receive the rent. He further submitted that the existence of relationship of landlord and tenant is *sine qua non* for granting relief under Bihar Building (Lease Rent and Eviction) Control Act, 1982, for this he relied on the judgment of Apex Court in the case of ***Rajendra Tiwary v Basudeo Prasad and anr AIR 2002 SC 136***. He further submitted that the instant revision application is fit to be allowed and plaint is fit to be rejected.

4. Learned counsel for the Plaintiffs/Opposite parties submitted that it is an admitted fact that defendant/petitioner was tenant of the suit premises on monthly rent of Rs.500/- and defendant/petitioner has paid monthly rent up to May, 2013 and plaintiff No. 1/Opposite party No.1 appointed to plaintiff No.2/ Opposite party No.2 as attorney on 29.12.2014 for collecting rent from the suit premises and for other different purpose, but defendant evaded to pay the rent from June, 2013, hence aforesaid eviction suit filed against the petitioner.

4.i He further submitted that in para 8 of ***Bhau Ram v. Janak Singh, AIR 2012 SC 3023*** the Hon'ble Apex



Court held that;

The law has been settled by this court in various decisions that while considering an application under order VII Rule 11 CPC the court has to examine the averments in the plaint and the pleas taken by the defendant in its written statement would be irrelevant, a cause of action is disclosed or the averments appear to be such that none of the grounds under Order VII Rule 11 CPC are found applicable, there can be no question of the rejection of the plaint.

4.ii. He further submitted that a cause of action related to received consideration for land generally arises when a right to sue first accrues, which is typically the date of receipt of money or when a right to recover that money is denied or revived, subject to the Limitation Act, 1963. he further submitted that Learned trial court has rightly passed the order, which is according settled rule, thus the application under order VII rule 11 is fit to be rejected.

5. The scope of Order VII Rule 11 of the Code of Civil Procedure has been explained in various decisions and the legal principles deducible. The material to be considered for rejecting the plaint has been dealt with in the case of ***Dahiben vs. Arvind Bhai Kalyanji Bhanusali reported in (2020) SCC ONLINE 563*** The Apex court has settled the principle and made the following observations:



“12.6- At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed”.

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :



(SCC p.324, para 12)

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the



plaint [Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512) which reads as: (SCC p.562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardeh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs.



Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003)1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315].

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."

6. Accordingly, the Court must determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

7. The Hon'ble Apex Court in judgment dated 31.10.2023 in ***Kum. Geetha Vs. Nanjundaswamy & Ors.***



reported in **2023 SCC OnLine SC 1407** reiterated the aforesaid principle and observed in para 7 that in simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

8. In the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, the Court is not concerned with the correctness of the averments, except to state that the plaintiff has to discharge the burden of proving his case. Insofar as the application under Order VII Rule 11 of CPC is concerned, the court will proceed only that far, to examine whether the plaint discloses a cause of action and no further.

9. From perusal of the plaint, it is clear fact that the petitioners had evaded to pay the rent for rented premises since june 2013 to the landlord so, this fact itself create cause of action. The fact that plaintiff / opposite party no.1 holding the title of ownership or not is the matter require deeply evaluation



by further evidence which will have to be adjudicated at the appropriate stage and appropriate forum after the parties adduce oral and documentary evidence with respect to the particular point. Further the rent must be paid by the tenant either to the landlord or to the person entitled to receive the rent on the behalf of landlord but cannot evade his obligation of paying the rent for rented premises. Moreover the plain reading of plaint suggest that the cause of action exist and the present case is not fit to be rejected as order VII rule 11 of CPC will not apply.

10. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any valid ground for interference in the impugned order of the trial court. This Civil Revision is devoid of merit and is liable to be dismissed.

11. Accordingly, the present Civil Revision is dismissed.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
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