

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.848 of 2023

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Rabindra Prasad Yadav @ Rabindra Kumar Son of Dasrath Prasad Yadav
Resident of Village Badgaon tola Chandabigha, P.O. Bangaon, Via Sirdalla,
P.S. Sirdalla Dist. Nawadah, at Present Residing at Village Babani Nagma
P.O. Sirdalla, Dist. Nawadah.

... .. Petitioner/s

Versus

1. Sudama Devi Wife of Jagdish Prasad Yadav (Daughter of Gursahay Mahto),
Resident of Kendua, P.O. G.B. Kendua, P.S. Sirdalla, Dist. Nawadah at
Present residing at Village Babani Nagma, P.O. Sirdalla, P.S. Sirdalla,
Distirct Nawadah.
2. Jagdish Prasad Son of Late Haridas Yadav @ Hari Mahto Resident of
Kendua, P.O. G.B. Kendua, P.S. Sirdalla, Dist. Nawadah at Present residing
at Village Babani Nagma, P.O. Sirdalla, P.S. Sirdalla, Distirct Nawadah.
3. Prayag Prasad Yadav Son of Late Kishun Mahto Resident of Village
Babhani Nagma, P.O. Sirdalla, P.S. Sirdalla, District-Nawadah.
4. Chamari Prasad Yadav Son of Late Kishun Mahto Resident of Village
Babhani Nagma, P.O. Sirdalla, P.S. Sirdalla, District-Nawadah.
5. Chando Prasad Yadav Son of Late Kishun Mahto Resident of Village
Babhani Nagma, P.O. Sirdalla, P.S. Sirdalla, District-Nawadah.
6. Umesh Prasad Yadav Son of Late Gauri Shankar Prasad Resident of Village
Babhani Nagma, P.O. Sirdalla, P.S. Sirdalla, District-Nawadah.
7. Smt. Bachi Devi Wife of Dasrath Yadav (Daughter of Late Gursahay
Mahto), Resident of Village Badgaon tola Chandabigha, P.O. Bangaon, Via
Sirdalla, P.S. Sirdalla Dist. Nawadah, at Present residing at Village Babani
Nagma P.O. Sirdalla, Dist. Nawadah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ray Saurabh Nath, Advocate Mr. Manjari Nath, Advocate Mrs. Shalini Sinha, Advocate
For the Respondent/s	:	Mr. S.S. Dwivedi, Sr. Advocate Mr. Gauri Shankar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-04-2025

Heard learned counsel for the petitioner as well as learned senior counsel for the respondent 1st set.

2. The petitioner is aggrieved by the order dated 19.07.2023 passed by learned Munsiff, Nawada in Title Suit No. 45 of 2017 whereby and whereunder the learned trial court ordered that the petition dated 05.04.2018 filed by the petitioner under Order VII Rule 11(a) and (d) of the Code of Civil Procedure (hereinafter referred to as 'the Code') would be decided on its merits after recording of evidence.

3. Learned counsel for the petitioner submits that the petitioner is the defendant before the learned trial court and respondent 1st set are the plaintiffs. The defendant/petitioner filed an application on 05.04.2018 under Order VII Rule 11 (A) & (D) of the Code for rejection of the plaint. After detailed hearing, the learned trial court did not pass any orders on the petition filed by the petitioner. Learned counsel submits that the learned trial court refusing to pass any orders on petition filed under Order VII Rule 11 and making it subject to recording of evidence is a completely illegal order. On this aspect, the learned counsel relies on the decision of the Hon'ble Supreme Court in the case of *R.K. Roja vs. U.S. Rayudu & Ors.*, reported



in *AIR 2016 SC 3282* and the case of *Saleem Bhai & Ors. vs. State of Maharashtra & Ors.*, reported in *AIR 2003 SC 759* wherein the Hon'ble Supreme Court held that without disposing of the application under Order VII Rule 11 of the Code, the court cannot proceed with the trial. In the case of *Saleem Bhai & Ors.* (supra), it has been held that a direction to file the written statement without deciding the application under Order VII Rule 11 of the Code cannot but be procedural irregularity touching the exercise of jurisdiction of the trial court. Learned counsel, thereafter, has addressed the Court on the different aspects of the matter touching upon the merits of the case but this Court is not inclined to consider those arguments at this stage for the simple reason that what is under challenge before this Court is the legality of the impugned order as to whether the learned trial court was justified in keeping on hold an application filed under Order VII Rule 11 (a) & (d) of the Code.

4. Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the respondents submits that the learned trial court has considered the contention of the defendant/petitioner and came to a finding that the plaint contains sufficient cause of action and has also held that issue of limitation at this stage could not be decided since it is a mixed question of fact and law.



Mr. Dwivedi further submits that the bare reading of the impugned order shows that the application filed by the defendant/petitioner has been effectively disposed of. Learned senior counsel further submits that answer of every question cannot be in black and white and by implication it should be inferred that the application dated 05.04.2018 has been decided by the learned trial court. Thus, he submits that there is no infirmity in the impugned order.

5. I have given my thoughtful consideration to the rival submission of the parties. It is not in doubt that an application under Order VII Rule 11 of the Code can be filed at any stage and the decisions cited by the learned counsel for the petitioner, namely, ***R.K. Roja*** (supra) and ***Saleem Bhai & Ors.*** (supra) are exactly on the point that if an application has been filed under Order VII Rule 11 of the Code, the same needs to be disposed of prior to deciding any issue involved in the matter. That is the settled law. Now in the facts of the present case, from perusal of the impugned order, I find that the learned trial court has discussed the case of the parties at length but it did not record any unequivocal finding on the petition dated 05.04.2018 so far as the point of limitation is concerned. Though Mr. Dwivedi has tried to impress upon this Court that not deciding



this issue at this stage virtually means rejecting the claim of the petitioner, the suit being on the ground of limitation, in my view, the same still requires a declaration by the court and it could not be simply inferred. For this reason, I am of the opinion that the learned trial court should have taken pains and disposed of the application dated 05.04.2018 filed by the petitioner under Order VII Rule 11 of the Code and should not have postponed it for deciding it on some future date. The said application under Order VII Rule 11 of the Code is required to be disposed of before proceeding further in the matter on the basis of material available on record and irrespective of the outcome.

6. Therefore, the impugned order dated 19.07.2023 passed by learned Munsiff, Nawadah in Title Suit No. 45 of 2017 suffers from big infirmity and hence, the same is set aside and the learned trial court is directed to proceed in the matter and disposed of the application dated 05.04.2018 filed by the defendant/petitioner under Order VII Rule 11 of the Code at the earliest and preferably within a month from the date of receipt/production of a copy of this order. It is made clear that this Court has not made any observation on the merits of the case and the application dated 05.04.2018 filed by the defendant/petitioner will be disposed on the basis of material



available before the learned trial court strictly in accordance with law.

7. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2025
Transmission Date	NA

