

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.115 of 2024

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Rakesh Narayan Singh Son of Late Kamal Deo Narayan Singh Resident of Village and P.O. and P.S.- Parbatta, District- Khagaria.

... .. Petitioner/s

Versus

1. Sanjeev Kumar S/o Mithilesh Pd. Singh Resident of Village- Dumaria, P.S.- Parbatta, District- Khagaria.
2. Rajeev Kumar, S/o Late Mithilesh Pd. Singh Resident of Village- Dumaria, P.S.- Parbatta, District- Khagaria.
3. Suman Kumar Singh, S/o Late Umesh Pd. Singh Resident of Village- Dumaria, P.S.- Parbatta, District- Khagaria.
4. Abhay Kumar Singh, S/o Late Vivekanand Singh Resident of Village- Dumaria, P.S.- Parbatta, District- Khagaria.
5. Kanhaiya Singh, S/o Late Raman Kumar Singh Resident of Village- Dumaria, P.S.- Parbatta, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Jitendra Kishore Verma, Advocate
Mr. Rakesh Narayan singh, Advocate
Mr. Abhishek Kumar Srivastava, Advocate
Mr. Sheyash Goyal, Advocate
Mr. Ravi Raj, Advocate

For the Opposite Party/s : Mr. Rajesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV ORDER

10 17-01-2025 Heard Mr. Tej Bahadur Singh, learned senior counsel

for the petitioner and Mr. Rajesh Kumar, learned counsel for the

opposite parties.

2. This civil revision application has been filed against the order dated 20-9-2023 passed in Title Suit No. 36 of 2021 by learned Civil Judge (S.D.), Gogari Khagaria (hereinafter referred to as 'the trial court') whereby the learned Sub Judge has rejected the petition filed on behalf of the petitioner-defendant under order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC'). The petitioner is



defendant in Title Suit No. 326 of 2021 filed by opposite parties for declaration of title and confirmation of possession with regard to the suit property. It is further prayed that if the plaintiffs are found dispossessed from the suit land during the pendency of the suit, a decree for recovery of possession of the suit land be passed in favour of the plaintiffs and also for permanent injunction.

3. The case of the plaintiffs in brief is that the land of Khata No.159 Plot No.281 and Khata No. 160 Plot No.280 admeasuring 5 acres 86 decimals and 3 acres 44 decimals was acquired in the name of Nageshwar Prasad Singh in a joint Hindu family. It is further pleaded that in an amicable settlement amongst the descendants of Jhumak Singh, the suit land was jointly allotted to the plaintiffs and they have been in peaceful possession over the same. The said land was originally purchased by one Suraj Narayan Prasad through auction sale and the sale certificate was granted to him and possession of the suit land was also given to him by the process of the Court. Suraj Narayan Prasad, the auction purchaser, sold this land to the joint family consisting of the descendants of Jhumak Singh and sale deed was executed in the name of Nageshwar Prasad Singh and, thus this joint family came in possession over the



suit land of plot Nos.281 and 280. It is further contended that Nageshwar Prasad Singh executed a registered deed of '*PATTANAMA*' in favour of Kashi Prasad Tiwari, who also executed a registered deed of '*KABULIYAT*' on 07-09-1943 with regard to 11 Bighas of land consisting of plot nos.281 and 280. Thereafter, Kashi Prasad Tiwari settled the aforesaid 11 Bighas of land to Nageshwar Prasad Singh in the year 1944 through '*HUKUMNAMA*'. Accordingly, the name of Nageshwar Prasad Singh was mutated in the revenue records of Ex-landlord and on payment of rent, receipt was issued to him as '*raiyat*' of the said 11 Bighas of land and after acceptance of rent, *Jamabandi* No.1 was opened in the name of Nageshwar Prasad Singh and also rent receipt was issued in his name by the State regularly.

4. The further case of the plaintiffs is that recently when the plaintiffs met the *Halka Karmachari* for paying ground rent and for obtaining the rent receipt, the *Halka Karmachari*, in collusion with the defendant, did not accept the rent and got a notice issued to the plaintiffs in collusion with C.O. Parbatta. The C.O., in turn, without any reason referred the matter to Additional District Magistrate, Khagaria (hereinafter referred to as the '*ADM Khagaria*') making an



unfounded request that whether the up-to-date rent receipt should be issued to the plaintiffs or not and by such order not only put the title of the plaintiffs to jeopardy rather his order also emboldened the defendant and the defendant thereafter started illegal interference in the possession of the plaintiffs. The further case of the plaintiffs, as per their plaint, is that the learned ADM, Khagaria by his order dated 25/01/2016 made an illegal observation directing the plaintiffs to seek remedy in a competent Civil Court and this order further cast a shadow of doubt on the title of the plaintiffs over the suit land. The defendant, with some persons came over the suit land and forcibly wanted to plough the suit land but due to protest made by the plaintiffs, he could not succeed.

5. The cause of action mentioned in para 16 of the plaint reads as under:-

“16.That the cause of action for this suit arose to the plaintiffs when the C.O., Parbatta and the learned Additional Collector, Khagaria by their order cast a shadow of doubt on the title of the plaintiffs and further when the defendant started overt-act after being emboldened with such order and lastly on 30.7.21 when the defendant made attempt to take forcible possession of the suit land.”



6. On summons, petitioner-defendant appeared and filed a petition under Order VII Rule 11 of the CPC for rejection of the plaint on the ground that the plaintiffs-opposite parties suppressed the material facts regarding their title and title of the defendant. The cause of action disclosed by the plaintiffs do not appears to be a real cause of action as the documents supplied with the plaint do not make out a case of title of plaintiffs. It is further contended that in paragraph nos. 8 and 9 of the plaint, the plaintiffs had stated that they got this land after execution of registered deed of '*KABULIYAT*' on 07-09-1943 in favour of Nageshwar Prasad Singh. It is next contended that from the list of documents submitted by the plaintiffs in serial nos. 2 & 3, it is crystal clear that plaintiffs' ancestors Nageshwar Prasad Singh had sold and settled the entire Schedule-1 land to Kashi Prasad Tiwari on 06-01-1944. However, said Kashi Prasad Tiwari already sold it to the petitioner's ancestors. Thus, from their own pleadings, as stated in paragraph nos. 8 and 9 of the plaint, it is crystal clear that the plaintiffs had lost all their right, title and interest over the land in 1944. It is contended that in paragraph nos. 11 to 16, the plaintiffs have discussed about their cause of action, which is about the order of the A.D.M., Khagaria, as contained in letter



no. 141 dated 25-01-2016 (Annexure-4), whereby he has refused to update the forged rent receipt of the plaintiffs on various grounds. The order of ADM, Khagaria as contained in letter no. 141, dated 25-01-2016 which is treated by plaintiffs as cause of action of this suit is no cause of action but, it shows that defendant had got right, title and interest over the land in the year 1953 itself by virtue of the Title Partition Suit No. 25/41 of 1949/1951 passed by Sub-Judge-1, Munger, which was upheld by Patna High Court in F.A. No. 271 of 1953 and the said judgment was reported in AIR 1961 Patna 449. It was never challenged by the plaintiffs till date at any stage and, thus, had attained finality.

7. After considering the pleadings made in the plaint, the learned trial court rejected the petition filed by the petitioner-defendant under order VII Rule 11 of the CPC and held that once the plaintiffs have disclosed the cause of action, the merit of cause of action is not to be tested at this stage of proceedings. It is the plaint alone, which is required to be considered to adjudicate whether the plaint discloses sufficient cause of action. The plaintiffs are required to disclose a cause of action whether right or wrong. The merit of cause of action is not required to be tested at this stage as the same would amount



of a trial before the trial. The cause of action as disclosed by the plaintiffs shows that the plaintiffs were owners and in possession of the suit land. The Circle Officer had denied to grant them rent receipt under the influence of defendant. On 30.07.2021, the defendant along with his accomplice had attempted to take forcible possession of the suit land. The learned trial court has further held that the merit of the cause of action shall be determined by the Court only when the parties are allowed opportunity to produce evidence in this regard and, therefore, the application filed by the petitioner-defendant was rejected by the learned trial Court.

8. Being aggrieved by the order dated 20-9-2023 passed in Title Suit No. 36 of 2021 by learned Civil Judge (S.D.), Gogari Khagaria, the petitioner filed the instant revision application assailing the impugned order on the ground that the plaintiffs have no cause of action to file the present suit against the defendant. The cause of action claimed to be asserted by the plaintiffs on the basis of a letter as contained in letter no. 141 dated 25-01-2016 issued by ADM Khagaria (Annexure-4). The said letter referred to in the plaint forms the basis of plaint which shows that petitioner-defendant is in possession of the suit land with his right title and interest adjudicated by the Sub-



Judge-1 Munger in Partition Suit No. 25/41 of 1949/1951, which was upheld by this Court in F.A. No. 271 of 1953 and affirmed by the Hon'ble Apex Court. Therefore, the defendant has got perfect right, title and possession over the suit land and the plaintiffs have got no right over the same. The present suit has been filed after 80 years which is also barred by law of limitation. The plaintiffs had deliberately suppressed materials facts i.e. real cause of action rather something illusory had been mentioned with a view to escape from the scope of order VII Rule 11. In this regard, reference may be made to a decision of the Apex Court in case of ***Bhagirath Prasad Singh v. Ram Narayan Rai & Anr.*** reported in ***AIR 2010 Patna 189***. It is vehemently submitted that Hon'ble Apex Court has mentioned the cause of action in the case of ***C.S. Ramaswamy & Ors. vs. Nanjammal & Ors.*** reported in ***AIR online 2022 SC 356*** wherein, the hon'ble Apex Court observed that “*while scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear*



terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue" The said letter of the ADM, Khagaria compelled the plaintiffs to file suit against him. The plaintiffs were trying to get rent receipt of the said land of the petitioner by fraudulent manner which was denied by the learned ADM Khagaria and against that order they filed present Title Suit against the petitioner, which is nothing but, the abuse of the process of the Court. It is further contended that the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. Reliance has been placed upon a decision of the Hon'ble Supreme Court in the case of ***Khatri Hotels Primate Limited and Anr. vs. Union of India and Anr.***, reported in ***(2011)9 SCC126*** wherein, it has been held that *“successive violation of the right will not give rise to fresh cause of action.”*In such view of the matter, the learned trial court has failed to exercise its jurisdiction vested in it by law on erroneous grounds.

9. On the other hand, learned counsel for the plaintiffs/opposite parties submitted that there is neither legal



nor any valid ground covered by clauses (a) and (d) of Order VII Rule 11 of the CPC and hence, there is no substance. It is also submitted that it is settled principle of law that Order VII Rule 11 of the CPC does not permit consideration of any defence of the defendant rather it is to be decided on the averments made in the plaint alone and that those averments will have to be assumed to be correct. The claim of the plaintiffs will have to be assumed to be correct. The claim of the plaintiffs has to be decided on the basis of evidence and materials on record. The plaintiffs claimed their right on the basis of sale deed executed by Suraj Narayan Singh in favour of Nageshwar Prasad Singh and they have also filed other documents along with the plaint in support of their claim.

10. Having considered the rival submissions of the parties and the averments made in the plaint and objections raised by the defendant-petitioner, it is pertinent to mention the legal position which arises for consideration in the instant revision application that whether an application under Order VII Rule 11 of the Code of Civil Procedure ought to be decided on the allegation in the plaint and suppression of material facts, if any, is a clear abuse of process of law and vexatious suit and whether the plaintiffs have cause of action to file the present



suit against the defendant- petitioner. The rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. This view has been taken in the case of ***P.V. Guru Raj Reddy & Anr. v. P. Neeradha Reddy & Others*** reported in **(2015) 8 SCC 331**.

11. Plain reading of Order VII Rule 11 of the CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaints and the documents relied upon. The averments made in the plaint are germane; the pleas taken by the defendant in the written statement or the application under Order VII Rule 11 of the CPC would be wholly irrelevant at this stage. This view has been expressed by the Hon'ble Supreme Court in the case of ***Saleem Bhai & Ors. Vs. State of Maharashtra & Ors.*** reported in **(2003) 1 SCC 557**.

12. The learned lower Court wrongly held that the documents attached with the plaint or the pleadings of defendant is also not to be considered at this stage. The documents filed at the time of filing of the plaint upon which the plaintiffs assert claim, after admission of the plaint, are made part of the plaint. 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. The aforesaid proposition of law has been decided in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali*** reported in ***(2020) SCC ONLINE 563***.

13. The test was laid down in ***Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success I & Anr.*** reported in ***(2007) 5 SCC 614***, which reads as under:-

“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. In Hardesh Ores (P.) Ltd. Vs. Hede & Co.5 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.”

14. While considering an application under Order VII Rule 11 of the CPC the Hon'ble Apex Court in umpteen of cases held that only plaint is to be looked into. In the case of



Bhau Ram Vs. Janak Singh & Ors. reported in **2012 (6) SCALE 530**, the Hon'ble Apex Court has relied on various decisions of the Hon'ble Supreme Court i.e., in the case of ***C. Natarajan Vs. Ashim Bai & Anr.*** reported in **(2007) 14 SCC 183**, ***Ram Prakash Gupta Vs. Rajeev Kumar Gupta & Ors.*** reported in **(2007) 10 SCC 59**; ***Hardesh Ores (P). Ltd. Vs. Hede & Company*** reported in **(2007) 5 SCC 614**; ***Mayar H.K. Ltd. & Ors. Vs. Owners & Parties; Vessel M.V. Fortune Express and Ors.*** reported in **(2006) 3 SCC 100**; ***Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.*** reported in **(2004) 3 SCC 137** as well as ***Saleem Bhai & Ors. Vs. State of Maharashtra & Ors.*** reported in **(2003) 1 SCC 557**.

15. The view of the Hon'ble Supreme Court indicated in the aforesaid decisions shall be enough to answer this question of cause of action and barred by any law under order VII Rule 11(a) and (d) of the CPC.

16. So far suppression of material facts is concerned, it cannot be only ground for rejection of plaint. In this regard reference may be made to a decision of the Apex Court in the case of ***T. Arivandandam vs. T. V. Satyapal & Anr.*** reported in **(1977) 4 SCC 467**, wherein the Hon'ble Supreme Court has



held that *“if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC.”*

17. As per the provision of Order X Rule 1 of the CPC, admission made by a party under this rule is conclusive against him. Such a statement is in the same position as written pleadings of the parties. A statement under Rule 2 of Order 10 would certainly be of a great value and has to be considered in the decision of the case. But, there is a clear difference between the statement under Rule 1 and 2. A statement under Order 10 Rule 1 is recorded by court in order to clarify the pleadings with regard to such allegation of fact which are not expressly or by necessary implication admitted or denied by the party against whom they are made. The said statement can be either of the party himself or of his pleader who represents him, whereas a statement under Order 10 Rule 2 is recorded in order to elucidate matters in controversy. In the suit it can be either the statement of the party in person or of any other person who is accompanying the party. The substance of the said statement is to be reduced into writing and it shall form a part of the record. Once a statement under Order 10 Rule 2 of the Code of Civil Procedure is recorded, it becomes part of the record and



can be looked into and relied upon by the court.

18. In such view of the matter, the oral evidence under order 10 Rule 2 of the CPC might have been admitted during evidence. Such admission may lead to dismissal of the suit on a preliminary issue on merits in consideration of all the issues.

19. This Court holds that suppression of material fact alone shall not entitle a defendant to have the plaint rejected as one lacking in cause of action under order VII Rule 11 CPC. 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 CPC, the stand of the defendant in the petition under order VII Rule 11 would be altogether irrelevant.

20. On analysis of the pleadings and averments made in the plaint, it is clear that cause of action has been specifically mentioned in the plaint, the suppression of material facts could be considered and looked into at the first hearing of the suit. The claim of the defendant could be looked into by adverting to order X of the CPC especially with regard to suppression of facts as well as averments made in the plaint read with the documents relied upon which could further be decided in view



of Order XIV Rule 1(5) of the CPC in the light of the principle laid down by the Hon'ble Supreme Court in the case of *T. Arivandandam* (supra), wherein, the order deals in two parts. The first part deals with Order VII Rule 11 and the second part deals with Order X of the CPC, if illusion is created.

21. The instant matter requires consideration invoking Order X of the CPC by recording oral statement whereafter if need arises then recourse of Order XIV Rule 1(5) of the CPC has to be adverted to decide it as a preliminary issue. In view of the above settled principle of law, the impugned order is unsustainable.

22. In the light of the above observation, the order dated 20-09-2023 passed in Title Suit No. 36 of 2021 by the learned Civil Judge (S.D.), Gogari Khagaria, is set aside and the matter is remanded to the learned court below for passing a fresh order in accordance with law after hearing both the parties.

23. The revision application is allowed.

(Khatim Reza, J)

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