

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.123 of 2017

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Ramji Prasad, son of Late Sitasharan Mahto, Resident of Village- Pura, P.O. Mundachh, P.S.- Telhara, District- Nalanda.

... .. Petitioner/s

Versus

1. Munna Kumar, S/o Ramji Prasad, Resident of Village- Pura, P.O. Mandachh, P.S. Telhara, District- Nalanda.
2. Vishwajit Kumar @ Rahul, S/o Ramji Prasad, Resident of Village- Pura, P.O. Mandachh, P.S.- Telhara, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rewti Kant Raman, Advocate
		Mr. Piyush Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Niraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV ORDER

14 24-02-2026 Heard learned counsel for the petitioner as well as learned counsel for the opposite party.

2. This Civil Revision application has been filed under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) against order dated 07.06.2017 passed in the Title Suit No. 25 of 2014, in the learned Munsif, Hilsa (hereinafter referred to as ‘Trial Court’) whereby and whereunder the learned Trial Court has rejected the petition dated 11.01.2017 filed under Order VII Rule 11 of the CPC.

3. The factual matrix, in brief, is that the plaintiff (opposite party) instituted Title Suit No. 25 of 2014 for declaration that the Schedule II property constitutes joint family



property, for allotment of 1/4th share, for preliminary and final decree of partition through a Pleader Commissioner, and for declaration that alienation made by defendant no. 1 without his consent are not binding upon him. According to the plaint, the common ancestor Kailu Mahto died leaving descendants including Ramji Mahto (defendant no. 1), who had two sons from two wives. It is alleged that family properties including lands in Village Pura, Baddi, and property at Biharsharif, along with a tractor, form part of joint family assets. The plaintiff sought partition on the ground that defendant no. 1 was neglecting family responsibilities and attempting to dispose of joint property in favour of defendant no.3. The defendants entered appearance contending, *inter alia*, that the suit suffers from non-joinder of necessary parties, having certain property being self-acquired, and that a prior partition had already taken place. They further pleaded that Title Suit No. 6 of 1999 involving similar issues is pending between the parties, hence the present suit is not maintainable. On this basis, the defendants moved an application under Order VII Rule 11 CPC for rejection of the plaint on the ground of absence of cause of action and pendency of earlier litigation.

4. Considering the facts and circumstances of the



case, the learned Trial Court, *vide* impugned order dated 07.06.2017 passed in the Title Suit No. 25 of 2014, rejected the application filed by the petitioner/defendant as not maintainable and held that the grounds given in petition of the defendant (petitioner herein) is not according to the grounds of rejection given in Order VII Rule 11 of the CPC. It further held that the grounds raised by the defendant are mixed question of law and fact and therefore, the same could be decided through the adjudication of the issue.

5. Aggrieved by the impugned order dated 07.06.2017 passed by the learned Trial Court in Title Suit No. 25 of 2014, the petitioner has preferred this Civil Revision application before this Court.

6. Learned counsel for the petitioner assailed the impugned order passed by the learned Trial Court and the application dated 19.01.2017 filed by the petitioner under Order VII Rule 11 of the CPC seeking rejection of the plaint was illegally rejected by the learned Trial Court. It is submitted that the plaintiff/opposite party had instituted Title Suit No. 25 of 2014 for declaration of Schedule II property as joint family property and for partition to the extent of 1/4th share along with ancillary reliefs, despite the fact that an earlier partition suit



being Title Suit No. 06 of 1999 between the same parties concerning the same subject-matter is already pending adjudication. It is further submitted that the plaintiff/opposite party, being a party to the earlier suit, could very well sought all appropriate reliefs therein and the institution of the subsequent suit is wholly redundant, vexatious and without any fresh cause of action, thus attracting the bar under Section 10 of the CPC and constituting an abuse of the process of the court.

6.i. Learned counsel for the petitioner further submitted that the learned Trial Court failed to appreciate that the plaint, on its own averments, does not disclose a sustainable cause of action in view of the pendency of Title Suit No. 06 of 1999 and the alleged prior partition through *Panchayati* dated 30.11.2011. It is submitted that the very foundation of maintainability stood shaken, and therefore the plaint was liable to be rejected at the threshold under Order VII Rule 11 of the CPC. It is submitted that the learned Trial Court committed a jurisdictional error in observing that the points urged and the documents produced by the defendants were not fit for consideration at this stage, as the issue of maintainability and absence of cause of action goes to the root of the matter and can be examined at the initial stage itself. Moreover, it is submitted



that the impugned order is cryptic, non-speaking and passed without assigning cogent reasons, thereby suffering from material irregularity and perversity in exercise of jurisdiction.

6.ii. Learned counsel for the petitioner also assailed the impugned order on the ground of non-joinder of necessary and proper parties. It is submitted that in a suit for partition, all co-sharers are necessary parties, yet the heirs of Ramkeshwar Mahto, Ram Hari Mahto and the three daughters of the common ancestor, namely Bedami Devi, Parmeshwari Devi and Ramkali Devi, were not impleaded, rendering the suit defective and not maintainable in law. It is further submitted that the learned Trial Court erred in relying upon the authority cited in the impugned order, though the factual matrix of that case is wholly distinguishable and inapplicable to the present controversy. The failure to consider the effect of the pending earlier suit, the plea of absence of cause of action and the objection regarding non-joinder of necessary parties amounts to failure to exercise jurisdiction vested in the learned Trial Court.

6.iii. In support of his submissions, learned counsel for the petitioner has placed reliance upon *T. Arivandandam v. T.V. Satyapal and Anr., reported in (1977) 4 SCC 467*, wherein the Hon'ble Apex Court held that if clever drafting creates an



illusion of a cause of action, the court must nip it in the bud at the first hearing; *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) and Ors.*, reported in (2020) 7 SCC 366, wherein it was reiterated that the power under Order VII Rule 11 of the CPC is intended to prevent vexatious litigation; and *Kanakarathanammal v. V.S. Loganatha Mudaliar and Anr.*, reported in 1963 SCC OnLine SC 154, wherein it was held that in a partition suit all co-sharers are necessary parties and absence thereof is fatal. Learned counsel therefore submitted that the impugned order dated 07.06.2017 is liable to be set aside and the application under Order VII Rule 11 of the CPC deserves to be allowed.

7. *Per contra*, learned counsel for the opposite party/plaintiff supported the impugned order dated 07.06.2017 passed by the learned Trial Court in Title Suit No. 25 of 2014 and submitted that the impugned order is legal, proper and does not call for any interference in revisional jurisdiction. It is submitted that the scope of Order VII Rule 11 of the CPC is limited to the averments made in the plaint alone, and at this stage the defence taken in the written statement or documents produced by the defendants cannot be looked into. It is submitted that the plaint clearly discloses a cause of action,



namely, the assertion of joint family property, denial of his legitimate 1/4th share, alleged neglect by the petitioner and apprehension of alienation of joint family property without consent. It is further submitted that mere pendency of an earlier suit being Title Suit No. 06 of 1999 does not automatically bar the present suit, particularly when the cause of action and reliefs claimed are distinct and relate to continuing denial of share and subsequent acts of the defendants. It is, moreover, submitted that the plea under Section 10 of the CPC or alleged prior partition are mixed questions of fact and law which can only be adjudicated upon evidence during trial and cannot be a ground for rejection of plaint at the threshold.

7.i. Learned counsel for the opposite party further submitted that the learned Trial Court has rightly held that the objections raised by the defendants, including alleged non-joinder of parties and pendency of earlier proceedings, do not fall within the strict parameters of Order VII Rule 11 of the CPC. It is submitted that the question whether all necessary parties have been impleaded or whether there has been a prior partition are issues to be framed and decided upon appreciation of evidence and cannot be adjudicated summarily. He further submitted that the power under Order VII Rule 11 of the CPC is



drastic and must be exercised sparingly, only when the plaint is manifestly barred by law on its face. It is lastly submitted that in the present case, since the plaint discloses triable issues relating to title, unity of possession and entitlement to partition, the learned Trial Court committed no illegality in rejecting the application of the petitioner under Order VII Rule 11 of the CPC. Learned counsel, therefore, prayed that the civil revision be dismissed as being devoid of merit.

8. In view of the rival submissions advanced on behalf of the parties and the materials available on record, the principal point which arises for determination in the present civil revision is *“whether the learned Trial Court committed any jurisdictional error or material irregularity in rejecting the petitioner’s application under Order VII Rule 11 of the CPC seeking rejection of the plaint in Title Suit No. 25 of 2014, particularly on the grounds of pendency of earlier Title Suit No. 6 of 1999 and alleged absence of cause of action?”*

9. Before advertng to the rival contentions on merits, it would be apposite to notice the scope of interference in exercise of revisional jurisdiction under Section 115 of the CPC. This Court does not sit as a court of appeal over the order of the subordinate court; interference is warranted only where the



learned Trial Court has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, unless the finding recorded by the learned Trial Court is shown to suffer from a patent error of law or jurisdictional infirmity, this Court would be slow to substitute its own view merely because another view is possible.

10. The contours of revisional jurisdiction under Section 115 of the CPC have been authoritatively delineated by the Hon'ble Apex Court in *Shiv Shakti Coop. Housing Society v. Swaraj Developers and Ors.*, reported in *(2003) 6 SCC 659*, wherein it has been held that the revisional power is supervisory in nature and cannot be equated with appellate jurisdiction; interference is permissible only where the subordinate court has acted without jurisdiction or with material irregularity in the exercise of such jurisdiction. Similarly, in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*, reported in *(2014) 9 SCC 78*, the Hon'ble Apex Court reiterated that re-appreciation of facts or substitution of a possible view is impermissible in revision unless the impugned order suffers from patent illegality or perversity.

11. At this stage, it is apposite to reproduce the



principles governing rejection of a plaint under Order VII Rule 11 of the CPC which have been explained in the case of ***Dahiben (supra)*** wherein the Hon'ble Apex Court has settled the principles 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.

23.5. 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.

23.9. 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 on the



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

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh 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 v. 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 7 Rule 11 CPC.*

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (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.”*

12. So far as the contention of the petitioner regarding the bar of *Res Sub-judice* under Section 10 of the CPC is concerned, it is to be noted that Section 10 does not provide for rejection of plaint but only mandates stay of trial of a



subsequently instituted suit when the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties litigating under the same title. The object of the provision is to prevent parallel trials and conflicting decisions. It is well settled that the provision does not render the subsequent suit non-maintainable; rather, it merely postpones its trial till the earlier suit is decided.

13. It is well settled that *Res Sub-judice* under Section 10 of the CPC generally requires a Court to stay, rather than reject, a subsequently filed suit when a previously instituted similar suit is pending. The rejection of a plaint occurs under Order VII Rule 11 of the CPC, which usually requires the suit to be barred by law on the face of the plaint. A plaint can only be rejected if, *ex facie*, it shows that the suit is barred by law and merely considering the averments made in the plaint it does not disclose the cause of action and also for other grounds which has been provided under Order VII Rule 11 of the CPC. *Res Sub-judice* usually requires looking into the records of the previous suit to determine similarity. Therefore, *Res Sub-judice* is not a direct ground for rejection of a plaint under Order VII Rule 11 of the CPC.

14. In the present case, from a plain reading of the



plaint of Title Suit No. 25 of 2014, it cannot be conclusively gathered at this stage that the matter in issue is directly and substantially identical to that in Title Suit No. 06 of 1999 so as to attract the mandatory ingredients of Section 10 CPC. Whether both suits involve the same cause of action, identical issues and same reliefs are questions which require examination of pleadings of both suits and may involve adjudication upon factual aspects. Such determination ordinarily falls within the domain of trial and cannot be conclusively decided in an application under Order VII Rule 11 CPC, which is confined to the averments in the plaint alone. Consequently, the plea of *Res Sub-judice* as raised by the petitioner does not, by itself, furnish a ground for rejection of the plaint at the threshold.

15. Upon overall consideration of the pleadings of the parties and the grounds urged in the application under Order VII Rule 11 of the CPC, this Court finds that the controversy raised by the petitioner involves disputed questions relating to existence of prior partition, identity of subject matter in the earlier Title Suit No. 06 of 1999, alleged absence of cause of action, and non-joinder of necessary parties in a suit for partition. In view whereof, determination of these issues would necessarily require examination of pleadings of both suits,



scrutiny of documents, and appreciation of evidence with respect to unity of title and possession, nature of the property, and entitlement of the parties. Such matters cannot be conclusively adjudicated merely on a reading of the plaint and undoubtedly constitute mixed questions of law and fact. The scope of Order VII Rule 11 of the CPC being limited and summary in nature, the learned Trial Court rightly refrained from embarking upon a detailed inquiry at the threshold stage.

16. In revisional jurisdiction, interference is warranted only when the subordinate court has exercised jurisdiction not vested in it, failed to exercise jurisdiction so vested, or acted with material irregularity. The impugned order, though concise, reflects consideration of the relevant aspects and does not suffer from jurisdictional error or perversity so as to warrant interference under Section 115 of the CPC. Since the plaint, on its face, discloses triable issues requiring adjudication after full-fledged trial and evaluation of evidences, this Court is of the considered view that no ground is made out to invoke revisional powers.

17. Accordingly, the civil revision stands dismissed.

18. There shall be no order as to costs.

19. Let the copy of this judgment be transmitted to the



court concerned forthwith along with the Trial Court Record for compliance.

Brajesh Kumar/- (Ramesh Chand Malviya, J)

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