

IN THE COURT OF CIVIL JUDGE-I (SR. DIV.), PIRO AT BHOJPUR

Title Suit No. 210 of 2022

Bindo Mishr vs. Tripuranand Mishr & Ors.

S.L. No.	Date of Order of Proceedings	Order with signature of Court	Office action taken with date/ Remarks
	05.08.2026	<u>ORDER</u> Attendance is filed on behalf of the plaintiff and defendants through learned counsels. On call, ld. counsel on behalf of the plaintiff and defendants appeared. Ld. counsel for the defendants have moved his petition dt. 04.11.2023 filed under Order VII, Rule 11(d) read with 151 C.P.C. It has been prayed to reject the plaint of the plaintiff on the ground that the plaintiff has instituted the present suit seeking his alleged 1/3rd share in respect of the suit property and has also prayed for cancellation of the sale deed executed by Mahant Mishra in favour of defendant no. 3. It has been submitted that from reading of the plaint, it appears that the plaintiff has deliberately concealed several material facts and resorted to clever drafting. The plaintiff has no cause of action to institute the present suit. It has been further submitted that the plaintiff himself admitted in the plaint that partition had already taken place with Mahant Mishra and after that partition, plaintiff and defendant no. 1 and 2 also partitioned among themselves and a registered partition deed was executed in May, 1989. The plaintiff has intentionally failed to mention this registered partition deed in the plaint. The plaintiff is a signatory to the said partition deed which has already been accepted and acted upon. Despite having full knowledge of these facts, the plaintiff has once again filed the present suit for partition. Therefore, no cause of action arose for seeking partition. The registered partition deed executed between the plaintiff and defendant no. 1 and 2 continues to remain legally valid. In such circumstances, plaintiff has no right to file a fresh partition unless and until the said partition deed is first declared void or cancelled by a competent court. Under the Limitation Act, the right to challenge any document is subject to the prescribed limitation period. The plaintiff had knowledge of the partition deed from the very date of its registration. Therefore, the limitation period for challenging the partition deed has already expired and the plaintiff can no longer institute any suit before any court seeking cancellation of the said partition deed. On these grounds, they pray to reject the plaint. The reply has been filed on behalf of plaintiff on 01.11.2025 with a prayer to reject the petition dated 04.11.2023 on the grounds that plaintiff had been residing outside village Berai with his family for a long time for earning livelihood. He continued to hand over his remaining earnings to his brother Om Prakash Mishra. Therefore, statement made in paragraph no. 5 of the petition that only defendant no. 1 & 2 were residing in the village is incorrect. The defendants are clever and habitual litigants and taking advantage of plaintiff's simplicity has filed malafide petition. It has been further submitted that until the filing of the present case, the plaintiff always followed the instructions of Om Prakash Mishra. It was at his instance that the so called registered partition deed dated 31.05.1989	
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was executed. Treating the said partition as having no value, the entire family continued to remain joint and on 20.07.1994, executed a joint sale deed, this clearly proves that the family continued to remain joint even in 1994. Apart from this, after the other sales made by Mahanth Mishr only 91-1/4 decimal of land remained. However, defendant no. 2 & 3 jointly prepared sale deed of 127.25 decimal of land, when only 91-1/4 decimal of land remained. Therefore, unless all the schedules of the property are compared and reconciled, the transactions cannot be properly verified and the dispute cannot be effectively adjudicated. In such circumstances, the said application has no legal significance. On these grounds he prays to reject the petition dated 04.11.2023.

Heard the learned counsels for the parties and perused the case record. The plaintiff has brought this suit against the defendants praying *inter alia* to partition his share of 1/3rd in the schedule A, B & C property of the plaint by metes and bounds. It has also been prayed that the share of plaintiff and defendant no. 2 be declared to the extent of half of share in the purchased property and all the four sale deeds mentioned in schedule D be also declared as void document.

In this case, the defendants raised only two grounds of attack namely, the partition has already taken place and thus there is no cause of action for institution of the suit. It has also been stated that the time of challenging the deeds is three year and the plaintiff acknowledge regarding those deeds since the date of registration. Hence, this court will firstly refer the relevant law on the point.

This Court is under duty to look into the contents of the plaint only at the time of deciding the petition under Order VII Rule 11.

Only plaint has to be seen:-

It is note worthy to mention that in case of **Sajjan Sikaria vs. Shakuntala Devi Mishra**, it is observed that while dealing with an application under Order VII, Rule 11 of the C.P.C. there is no requirement to consider to written statement filed by the defendant and the same was also observed in case of **Saleem Bhai vs. State of Maharashtra**.

Therefore, this Court will merely look into the plaint. This Court will discuss as to what is cause of action and how the same is to be appreciated.

Cause of action:-

(I) It has been held that while considering the rejection of plaint under Order VII Rule 11 C.P.C. the strength or weakness of the plaintiff's case is not to be seen and what is required to be disclosed by the plaintiff is clear right to sue. (Astral Cables Ltd. Vs. The NSCI 332: 2011(7) MLJ 438 (DB)).

(II) It is to be noted that under Order VII Rule 11 of C.P.C., there is a requirement of inclusion of cause of action. Ordinarily, a Court of law is to presume that every allegation in the plaint is true. As a matter of fact, when the plaint raises arguable points which requires deeper deliberation and scrutiny, the same cannot be rejected in the eye of law. Also, that, a plaint cannot be rejected under Order VII Rule 11 of C.P.C., where the suit is required to

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be heard on merits after taking evidence in a given case. However, if the averments made in the plaint and the documents relied upon establish a cause of action, then the plaint should not be merely rejected based on the reason that the averments are not enough to prove the facts mentioned therein. Moreover, a Court of law can examine the parties to clear the pleadings. (R. Perumal Naicker Vs. R. Sakrapani, (2013) 6 MLJ 119, Para 10, 11).

(III) The Court must be examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. (Dahiben Vs. Arbinbhal Kalyanji Bhansai) 2020 SCC Online 563, Para 14).

(IV) The test is 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 and 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 word. (Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success I & Anr. Para 139).

The plaintiff vide para 8, 9 & 10 has described the facts whereby right to sue arose to him. The plaintiff has described the sequence of events and non-action by the defendants. The different dates on which cause of action arose has been well narrated in the plaint. On the basis of above prepositions of law, it is clear that this court has to construe the plaint as it stands and this court has to presume every allegation raised in the plaint to be correct at this stage. Thus, the plaintiff has clearly described the cause of action for institution of the suit. In the light of above discussions, it is clear that the petition under question is not having merit on this ground.

Let us take other ground raised by the defendant.

Order VII Rule 11 Clause D:-

Hon'ble Supreme Court in case of M. Gurudas vrs. Rasaranjan [(2006) Volume 8 SCC 367] observed that, "while dealing with an application for rejection of plaint under Order VII Rule 11 the Court cannot go into disputed question of fact."

Order VII Rule 11(d) C.P.C. applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law enforce and it does not apply in case of any disputed question.

It means in order to decide whether the suit is barred by any law, it is statement in the plaint which will have to be construed and this Court is under duty to only look into the statement made in the plaint. This Court is not supposed to go into the correctness of the statement made in the plaint and at this stage, the disputed question of fact with regard

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to limitation cannot be addressed. The plaintiff has discussed about his knowledge regarding the deed under challenge in para 5 of the plaint.

The defendants have not raised any fact inviting the ground mentioned in Order VII Rule 11(d) C.P.C.

In the light of above propositions of law, this Court is of the considered opinion that the plaintiffs have stated that the cause of action arose to him, vide para 8, 9 & 10 of the plaint and has also discussed as to when he came to know about the deeds and then challenged the same vide para 5 of his plaint. This Court is of the opinion that while dealing with the petition for rejection of plaint, this Court has to presume that every allegation in the plaint is true and the Court is not supposed to examine the plaintiff's case in minute detail, but is of the considered opinion that the reliefs sought by the plaintiff by this legal proceeding is tenable in law. Hence, the petition filed on behalf of defendants is without merit and has no force of law. The same is liable to be rejected and therefore, the petition is hereby rejected for want of any merit.

Put up on 19.03.26 for further proceedings.


Civil Judge (Sr. Div.)-I
Piro at Bhojpur