



## The Court of Civil Judge(Sr. Div.)1 PIRO, BHOJPUR

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dated 25.08.2023 (Hon'ble Patna High Court), Civil Revision No. 821 of 2023 dated 04.03.2024 passed by Hon'ble M.P. High Court. He has also submitted the photocopy of order passed by S.D.O., Piro in case no. 01 of 2020 under Section 144 Cr.P.C. and photocopy of report submitted by Amrendra Narayan Srivastav. The ld. Counsel for o.p. also relied on M.A. No. 635 of 2000 (dated 15.01.2001).

The rejoinder on behalf of applicant/petitioner has been filed on 10.05.2024 with prayer to reject the petition on the ground that the same is not maintainable in the eye of law and has been given with wrong averments. It is further pleaded on his behalf that this misc. case has been filed under Order IX Rule 13 wherein the summon had not been send properly and the case was decided *ex-parte* and the applicant of this case has come to know about all the previous proceedings upon notice by C.O./D.C.L.R. etc. in mutation case/proceeding. It is further stated that order dated 25/03/1968 passed by Munsif was not contested and the jurisdiction of Munsif Court has been changed and presently vested in the jurisdiction of Sub-Judge Court. The cause of action has been sufficiently disclosed in the misc. application. The o.p's had obtained *ex-parte* decree by misleading the Court and it is a matter of fact that due to non-service of processes and information, the applicant could not filed the misc. case at earliest.

Heard the ld. Counsel for the parties at length and perused the case record. This mis. Case has been filed under Order IX Rule 13 to set aside the *ex-parte* decree passed in T.S. No. 79 of 1967 by applicant Hareram Singh. It has been pleaded on behalf of applicant that he came to know about the *ex-parte* decree when a petition regarding the possession was filed before S.D.O. Piro. On the basis of that information, he obtained the certified copy of the order and found that the plaintiff in the original suit has obtained the decree on the basis of wrong facts and thus he has prayed to hear the matter by way of this mis. case.

It is the case of o.p that SCC case no. 79 of 1967 for the recovery of loan of Rs. 200/- had been filed by Kapil Singh against Ramdhari Singh in the Court of Munsif, Ara and the order was passed on 25-03-1968. On the basis of the order passed, execution case was filed in the Court of Munsif at Ara.

**Grounds of challenge:-** The o.p has pleaded that the plaint filed on behalf of applicant be rejected on the following grounds:-

(a) Whether it does not disclose cause of action?

(b) Whether the suit appeared from the statement to be barred by any law?

Here one important question arises as to whether the petition under Order VII Rule 11 C.P.C. will lie in this case or not, for the reason that the said provisions are applicable in case of plaint, but it is a Misc. case filed under Order IX Rule 13. This Court has given opportunity to the o.p to show that in such misc. cases the provisions of Order VII Rule 11 may be applicable as there is a specific procedure to be followed in

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case of misc. cases filed under Order IX Rule 13. This Court does not find that this petition under Order VII Rule 11 C.P.C. is maintainable in this misc. case filed under Order IX Rule 13 and thus, the petition filed on behalf of o.p. is not maintainable. Saying so, this Court will decide the petition on merit.

It has been submitted on behalf of o.p that the Sristedar of Ara, Civil Court has reported that the case is barred by 18531 days but no limitation petition has been filed by the petitioner to condone the delay. Opposite party will feel that the petitioner has knowledge of the case and they had filed Misc. Case No. 05 of 1970 to set aside the sale certificate and also stated that the land belongs to Bisundeo Singh by deed of gift who died issueless. Court also not accepted the statement of gift and the case was dismissed on 29-05-1970.

Since o.p. has challenged the said misc. case under Order VII Rule 11(a) and 11(d). Therefore, it would be necessary to discuss the law on the point. Under the law the duty is cast upon the court the 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. It is important to mention here that the pleas taken by the defendant/o.p. in the written statement/objection and application for rejection of plaint on merits, would be irrelevant and cannot be adverted to are taken into consideration. Needless to mention that 'cause of action' means every fact which would be necessary for the plaintiff to prove if, traversed, in order to support his right to judgment/order. It consists of the bundle of material facts, which are necessary for the plaintiff/applicant to prove in order to entitle him to the relief claimed in the suit/application. From perusal of para 1, 2 and 3 of the misc. application, it transpires that the applicant has mentioned the cause of action. Though, the applicant has not mentioned the specific date as to when he came to know about title suit 79/1967. So far as the question of limitation is concern, it is established principle of law that the issue of limitation is a mixed question of law and facts, for which, the parties will have to lead evidence. It is note worthy to mention that in case of *Sajjan Sikaria vrs. Shakuntala Devi Mishra*, it is observed that while dealing with an application under Order VII Rule 11 of C.P.C, there is no requirement to consider to written statement/objection filed by the defendant and the same was also observed in case of *Saleem Bhai Vrs. State of Maharashtra*. In view of the direction contend in Civil Appeal No. 14807 of 2014 dated 20.12.2024, delivered by the Division Bench of the Hon'ble Supreme Court, it may be stated that the question of suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Thus, in

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**Continue..** the light of above discussion, this Court reaches to the conclusion that the petition filed on behalf of o.p. is baseless and lacks merit. It deserves to be dismissed and thus, it is hereby ordered to be dismissed on account of non-maintainability as well as being want of merit.

Put up on ..... for further proceedings.

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