

IN THE COURT OF CIVIL JUDGE (S.D.), GOGARI, KHAGARIA

Miscellaneous Suit No.08/2024
Ahiliya Devi & Ors. Vs. Renu Devi & Ors.

=====

Order || 04.06.2026

The record is fixed for order, this miscellaneous case has been filed by the petitioners /plaintiffs under Section 114 of the C.P.C., and Order 47 Rule 1 of the C.P.C.,(arising out of T.S. No.159 of 2024). This review petition has been filed to review the Order dated-01.03.2024 passed by this Court in T.S. No.159 of 2024 in which the Court has rejected the plaint under Order 7 Rule 11 of the C.P.C., for non-disclosure of cause of action.

Ld. counsel on behalf of the petitioner further submits to this Court that the record of Title Suit No.159 of 2014, it is apparent that the defendants appeared in this case & filed their written statement, thereafter the Court framed the XI issues on 18.01.2019 and fixed the record for producing evidences of the parties to the suit. It is also apparent from the record that both the parties to the suit produced their respective oral & documentary evidence and after the full dressed trial the record was fixed for final argument for the defendants. During argument the lawyer of the defendants, firstly raised the issue orally that the plaintiff has no cause of action for the suit and then the Court stopped the argument of the defendants and asked the plaintiffs lawyer to argue on this issue only. The lawyer of the plaintiffs referred the plaint showing cause of action for the said suit, but the learned Court considered only Paragraph No.22 of plaint and dismissed the suit holding that the plaintiffs have no cause of action for the suit, referring provision of Order VII Rule-11 of C.P.C. It is submitted that the Court erred in law & facts by passing order citing provision of Order-VII Rule-11 of C.D.C., while no application under Order VII Rule 11 of C.P.C. Was filed by the defendants.

Miscellaneous Suit No.08/2024
Ahiliya Devi & Ors. Vs. Renu Devi & Ors.

Contd

4/6/26

It is further submitted by the Ld. counsel that Court erred in law and facts by passing order under Order 7 Rule 11 while no application under Order 7 Rule 1 of the C.P.C., filed by the defendants, in his review petition petitioner has submitted that in view of the several judgments of the Hon'ble Supreme Court and Hon'ble Patna High Court. The Order dated-01.03.2024 is in bad law.

Ld. counsel on behalf of the petitioners further submits that there is a very apparent of the face of the record that Trial Court had to decide all the issues under Order 16 Rule 2 of the C.P.C.

Ld. counsel further submits that in above facts and circumstances there is an error face of the record in passing the impugned Order dated-01.03.2024 passed by this Court may be reviewed and after hearing the parties set aside the impugned the Order dated-01.03.2024.

On the other hand a rejoinder has been filed on behalf of the opposite parties /defendants to the review petition dated-08.04.2024. Ld. counsel on behalf of the opposite party submits that review petition dated-08.04.2024 is frivolous, illegal and baseless and void in the eyes of law.

Ld. counsel further submits petitioners badly failed to explain in the instant petition dated-08.04.2024 that what error found on the face of the record which needs to be reviewed. Further Ld. counsel on behalf of the opposite party submits that petitioner also failed to explain that what fact beyond their knowledge which even after due diligence not attracted up in their knowledge to rectify within reasonable time.

Further submission on behalf of the petitioners that the real facts involved in the matter concerned is as that the plaintiffs brought Title Suit No.159/2014 against the defendants. In the said suit after concluding evidence of both the parties, your honour finally heard both the parties. During the course of final

4/6/26

Order 7 Rule
in law and facts by
Ors.

J. KHAGARIA

THE COURT OF CIVIL JUDGE (S.D.), GOGARI, KHAGARIA

Miscellaneous Suit No.08/2024
Ahiliya Devi & Ors. Vs. Renu Devi & Ors.

6

argument the lawyer of the defendants raised serious question of law that no cause of action narrated against the defendants in the entire plaint and this suit is badly lacking on the point of cause of action and thus, hit under the Provision of Order VII Rule 11 (a) C.P.C. Further, during the course of the final argument, the Ld. lawyer of the plaintiff on the point of explanation of cause of action if any, against the defendants kept mum and answerless. It is also important to mention here that the learned lawyer of the plaintiff during the course of final argument, admitted the fact that there is no such cause of action mentioned in the plaint against the defendants and their suit is badly lacking on the point of substantive question of law. So, the Ld. lawyer of the plaintiff at the concluding stage of the suit filed an amendment petition to amend the plaint for cause of action which your honour denied due to belated stage and danger of re opening of the suit a fresh after concluding evidence of both sides.

Further submission on behalf of the petitioners that it is not out place of place to mention here that from the perusal of the plaint of T.S No-159/2014, it transpires that entire cause of action of the suit either mentioned in Paragraph No.22 of the plaint or anywhere of the plaint only concerned with the revenue officials and their various Revenue Court orders, but they neither made party to this suit, nor any relief sought against them by the plaintiff in the plaint. It is also very significant to mention that the entire plaint of T.S No.159/2014 is lacking and silent on the point of exact date and manner of cause of action if any is attracted at the hands of the defendants.

In the above circumstances the opposite party submits to this Court that the review petition dated-08.04.2024 filed by the petitioner /plaintiff is fit to be dismissed.

4/6/26

Miscellaneous Suit No.08/2024
Ahiliya Devi & Ors. Vs. Renu Devi & Ors.

Contd
4/6/26

=====

Heard both the sides and perused the case record, on perusal of the record it appears that this Court on 01.03.2024 passed the order under Order 7 Rule 11 of the C.P.C., and rejected the plaint of the plaintiff for non-disclosure of cause of action. Ld. counsel on behalf of the petitioner submits that there is error apparent in the face of the record, therefore, the Order dated-01.03.2024 is fit to be reviewed. After perusing the Order dated-01.03.2024, I found that the Court had passed the order after referring to the plaint and decided the case on merit and after discussing the entire plaint, the Court had rejected the plaint under Order 7 Rule 11. In the case of **Parsion Devi & Ors. Vs. Sumitri Devi & Ors.** (1998) "the Apex Court held that the power of review can be exercised when there is "a mistake or an error apparent on the face of the record". The aforesaid words mean "an error or mistake which is self-evident", but re-hearing of the matter for detecting an error is beyond the scope of review. On an analysis of the aforesaid decisions, it becomes clear that as has been decided in the case of **Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Ors.** AIR 1954 SC 526 (supra), the power of review can be exercised on three grounds laid down by the Apex Court in the said decision". In **Canara Bank Vs. P. Selathal & Ors.** (2020), also referred to the decision of Hon'ble Patna High Court in Miscellaneous Appeal No.701 of 2018. Ld. counsel after referring these two judgments submission to this Court that Order dated-01.03.2024 may be reviewed in the light of these two judgments.

Therefore, considering the above submission of both the parties and the settled proposition of law, I find this Court can not entertain the review petition to find out as to which view is correct. This Court has already passed an order under Order 7 Rule 11 on 01.03.2024 and rejected the plaint of the plaintiff. **Therefore, in view of the discussion made above, I am of the view that there is no scope for review of the impugned order without the**

4
4/6/26

Miscellaneous Suit No.08/2024

Ahiliya Devi & Ors. Vs. Renu Devi & Ors.

=====

parameter laid down by the Hon'ble Court on this issue, with these observations petition dated-08.04.2024 filed by the petitioner /plaintiffs is hereby dismissed.

The Office Clerk is further directed to deposit the record in the record room within a stipulated time period.

Dictated



Civil Judge (Senior Division)
Gogari, Khagaria.

Date of Order	
Date of reserving Order	
Uploading date	
Uploaded by	