

IN THE COURT OF MUNSI, NARKATIAGANJ, WEST CHAMPARAN

T.S NO- 43/2017

CIS NO. TS 117/2019

RAJARAM TIWARI.....PLAINTIFF

Vs

MOHAN PANDIT & OTHERS.....DEFENDANTS

DATE	ORDER	REMARKS
28.10.2024	<p>Case called out. Parties are present. Today this Record is fixed for the hearing and order dated on the petition filed by Defendant no-1 & 2 under order-7 Rule-11 CPC.</p> <p>The petitioner defendant no-1 & 2 filed the petition under order-7 Rule-11, CPC on dated 16.05.2018. The Rejoinder of the same was filed by the plaintiff on dated 12.07.2018.</p> <p>Heard the Ld. Counsel of both sides and perused the petition.</p> <p>Petitioner Defendant no-1 & 2 Petition read as Follow:- The suit has been filed by plaintiff for declaration of Right Title and Recovery of Possession of the suit land from the Defendants.</p> <p>It is further stated as plaintiff has stated in the plaint that he has bought 13 dhur of land from Laxmi Thakur as Given in Schedule no-1 of the plaint and out of that 6 dhur of land as given in schedule no-2 of the plaint are the suit land and further stated that the value of the suit land is not Less than 300000/- and if we include the house value then it value would not less than 350,000/-</p> <p>It is further stated that suit land situated in the town of Narkatiaganj and plaintiff has valued it less than its original value and plaintiff also given less court Fees.</p> <p>It is further stated by the defendant that value of the suit land as shown is less than its original value and in its reality the value of suit land is more</p>	

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<p>Continue 28.10.2024</p>	<p>than 300000/- and this court have not jurisdiction to adjudicate the suit.</p> <p>Petitioner also contended that Plaintiff has filed this suit for Declaration of Right Title and and For Recovery of Possession from the suit land as given in schedule no-2 of the plaint. It is also contended that its false to say that Defendant were dispossessed the plaintiff from the suit land on dated 20.01.2017 and also stated that in para-10 of the plaint Plaintiff have stated that he having right title and possession over the suit land.</p> <p>It is further stated by the petitioner that plaintiff have filed this suit by concealing the True Fact of the Case.</p> <p>Further, Stated that Plaintiff on dated 20.11.2003 had already sold the land of Schedule no-1 of 13 Dhur to Smt. Revati Kumari W/O- Anand Kumar Mishra, then he has left no any Right to Filed this suit. it is further stated that as per para-10 of the plaint, plaintiff showing his possession over the land of Schedule no-1 of the plaint, it is wrong and neither plaintiff having possession over the suit land nor their Purchaser having possession over the suit land. Accordingly Plaintiff not having any Right, Title over the land of either schedule no-1 or Schedule no-2 suit land. So, In reality Plaintiff have no any Right to filed this suit.</p> <p>Plaintiff Submission as per their Rejoinder :- The petition dated 16.05.2018 filed under Order-7 Rule-11 of the CPC by Defendants no-1 & 2 is not at all maintainable. Petitioner has not given under which sub-section of O-7 R-11 this petition has been filed and also not according to law and petition is also</p>	
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<p>Continue 28.10.2024</p>	<p>The Hon'ble Supreme court in case of P.V Guru Raj Reddy &Anr. Vs. P.Neeradha Ready & Ors AIR (2015)8 SCC 331 has held that rejection of plaint under order-7 Rule-11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The condition precedent to the exercise the power under order-7 R-11, therefore are stringent and have been consistently held to be so by the court. It is the averment in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of Exercise of power under order-7 R-11, the stands of the Defendants in written statement or in Application for rejection of plaint is wholly immaterial. It is only if the averments in the plaint ex-facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trail.</p> <p>Similarly, Hon'ble apex court reported in case Prem Lala Nahata & Anr Vs. Chandi Prasad Sikaria AIR 2007 SCC 1247 has held that Defect of Mis-joinder of parties and causes of action is not a ground for Rejection of plaint under o-7 R-11 (d). assuming it is barred by any law. Thus, Mis-joinder or Non-joinder of parties to the suit/dispute is a procedural Defect and for the same the suit can't be said to be not maintainable and liable to be Rejected under Order-7 R-11(d).</p> <p>The Hon'ble apex court in case of K. Akbar Ali Vs. K. Umar Khan & ors. 2021 (5) supreme 130 : 2021 AIR (SC) 1114 has held that Order-7 Rule-11 - Rejection of plaint – Cause of Action – Clever Drafting Creating Illusion of Cause of action are not</p>	
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