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SLP(C)No. 17343 OF 2000

ITEM No.1

Court No. 8

SECTION XVII
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.17343/2000

(From the judgement and order dated 20/07/2000 in CR 145/00
of The HIGH COURT OF PATNA)

JAGESHWARI DEVI & ORS.

Petitioner (s)

VERSUS

SHATRUGHAN RAM

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for permission t o file written submission and
office report)
With

SLP(C)No.5125/2001

Date : 07/02/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. B.B.Sahoo,adv.
In 17343/00 Mr. Krishna Prasad,adv.
Mr. Ranjan Dwivedi,Adv.

In SLP 5125/01: Mr. N.S.Bisht,adv.

For Respondent (s) Mr. Ranjit Kumar,Sr.Adv.
Mr. Gaurav Agarwal,adv.
Mr. Prashant Kumar,Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.J
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Leave granted.
Both the appeals are dismissed. No costs.

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(Suman Wadhwa)
Court Master

(S.Malkani)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2002@@
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(Arising out of SLP(C)No. 17343/2000)

Jageshwari Devi & Ors. ...Appellants

Vs.

Shatrughan Ram ...Respondent

WITH

CIVIL APPEAL NO. OF 200@@
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(Arising out of SLP(C)No. 5125/2001)

ORDER@@
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.....L.....I.....T.....T.....T.....T.....T.J

Leave granted.

The order passed by the Patna High Court declining to interfere with the order of the trial court in which the petition filed by the plaintiff under Order 6 Rule 17 of the Civil Procedure Code for amendment of the plaint was allowed and the petition filed by the defendant under Order 7 Rule 11 Civil Procedure Code seeking rejection of the plaint was rejected, is under challenge in these appeals filed by the defendant.

We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7

Rule 11 (a) of the C.P.C. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action; while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of appellant that the cause of action disclosed is vague and incomplete is not a ground for rejection of the plaint, under Order 7 Rule 11 C.P.C. no exception can be taken to the order.

The other petition which was filed by the plaintiff was for amendment of the plaint to introduce a prayer for recovery of possession and an averment to the effect that ad valorem court fee is paid on the plaint. This amendment@@
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was filed in view of the objection taken by the defendant that a suit for declaration of title simplicitor was not

maintainable. The trial court considered the matter, on the touchstone of settled principles of law regarding

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amendment of pleading and took the view that this was a fit case for allowing the prayer for amendment. We find no illegality in the order.

In the result, both the appeals are dismissed. No costs.

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.....J.
(D.P. MOHAPATRA)

.....J.
(BRIJESH KUMAR)

New Delhi;
February 7, 2002.