IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.21 of 2016

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Ganesh Choudhary S/o. Late Yadunandan Choudhary, R/o. Mohalla-Pethiya Gachhi, Ward No.23, P.O.+ P.S.+District- Samastipur

... ... Petitioner/s

Versus

The Middle School, Pethiya Gachhi, through Head Master Smt. Suchitra Kumari, W/o. Sri Prem Prakash Sharma, R/o. Mohalla- Kashipur, P.O.+P.S. +District- Samastipur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate
		Mr. Ravi Bhatia, Advocate
For the Respondent/s	:	Mr. Ram Vinay Prasad Singh, AC to GA-XII
For Opposite Party	:	None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 22-02-2019

Though the State of Bihar is not a party to the civil revision application, however, Mr. Ram Vinay Prasad Singh, learned counsel, is appearing on behalf of the State, to assist the Court.

2. Heard learned counsel for the petitioner. No one appears on behalf of Opposite Party, though Vakalatnama has been filed on behalf of Opposite Party.

3. The Opposite Party, Middle School, Pethiya Gachhi, through its Head Mistress Smt. Suchitra Kumari filed Title Suit No.210 of 2010 against the petitioner herein for declaration that the plaintiff is bona fide titleholder of the suit land as the school is running over the public land since 1933 and has perfected the right, title and interest in law by adverse

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possession.

4. The petitioner filed an application under Order VII Rule 11 of the Code of Civil Procedure before the learned Court-below praying therein for rejection of the plaint on the ground that the plaintiff has got no cause of action because the plaint discloses that the school is a government school and claims to be running on public land. Therefore, only the State could have brought a suit and not the Head Mistress of the School, who is not the State or the person authorized by the State of Bihar.

5. Learned counsel for the State referred to certain letters issued by the head of the Education Department of the Government of Bihar, but none of the letters shows that the Head Mistress was authorized by the State Government to bring the suit on behalf of the State of Bihar.

6. In the circumstance, apparently, Suchitra Kumari has no cause of action to bring the suit. Order VII Rule-11 of the Code of Civil Procedure relates to rejection of plaint and reads as follows:

"11. Rejection of plaint.-The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

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(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

7. Contention of the learned senior counsel

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appearing on behalf of the petitioner is that this case is covered by Clause (a) of the aforesaid Rule. According to learned counsel the plaint should not only disclose the cause of action; rather the cause of action should arise in favour of the plaintiff so that the relief could be granted to the plaintiff. If the cause of action is not available to the plaintiff, the suit cannot proceed and by impugned order dated 30.09.2015 the Court-below has irregularly exercised jurisdiction and rejected the petition under Order VII Rule-11 of the Code of Civil Procedure.

8. Section 79 of the Code of Civil Procedure provides for suits by or against Government which reads as follows:

> *"In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be shall be-*
> *(a) in the case of a suit by or against the Central Government, the Union of India, and*
> *(b) in the case of a suit by or against a State Government, the state."*

Order XXVII of the Code of Civil Procedure relates to filing of pleading by or against the government, Rule-1 reads as follows:

> *"In any suit by or against the Government, the plaint or written statement shall be signed by*

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such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case."

9. It is evident that the Head Mistress of the school is not an authorized person by the State Government. The entire plaint reveals that the suit property is claimed as property of the State and the relief prayed is also on behalf of the State. In the circumstance, the present plaintiff Smt. Suchitra Kumari has no cause of action to bring the suit and the plaint was fit to be rejected. However, the learned Court-below has acted with material irregularity and illegality in rejecting the prayer of the petitioner. Therefore, the impugned order dated 30.09.2015 is hereby set aside.

10. The State shall be at liberty to bring fresh suit through its authorized representative according to law. If the State bring suit, the cause of action shall be deemed from the date of this order for the purpose of limitation if any.

11. Accordingly, this Civil Revision stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2019
Transmission Date	

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