

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.133 of 2016

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Captain Rajesh Kumar son of Tara Kant Ojha, resident of 444, East Mahesh Nagar, Police Station Patliputra and Town and District Patna.

... .. Petitioner/s

Versus

1. Pramila Singh, wife of Anil Singh, resident of Mohalla Shivpuri, Road No. 1, Adjacent to Nala, Police Station Shastrinagar and Town and District Patna.
2. The State of Bihar, through the Collector, Patna.
3. The Collector, Patna.
4. The Deputy Collector Land Reforms, Patna.
5. Arun Kumar Mishra son of Late Satya Narayan Mishra.
6. Bimal Kumar son of Late Satya Narayan Mishra,
Both Sl. No. 5 and 6 are resident of Ganghara Niwas Mohalla Shivpuri,
Road No. 1, Police Station Shastrinagar, Town and District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Capt. Rajesh Kumar, In Person

For the Opposite Party/s : Mr. Dhaneshwar Pd. Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 03-09-2024

Heard the petitioner, namely, Captain Rajesh Kumar (in person) and learned counsel for the opposite parties.

2. This civil revision application has been filed against the order dated 08.06.2016 passed in Title Suit No. 463 of 2015 by learned Sub-Judge-1, Patna, whereby the learned trial court has rejected the petition filed on behalf of the defendant/petitioner under Order VII Rule 11 of the Code of Civil Procedure.



3. The petitioner is defendant no. 4 in Title Suit No. 463 of 2015 filed by the opposite party no. 1 for declaration of title and possession of the plaintiff with regard to the Schedule-II land and further for declaration that the said Schedule-II land is a part and parcel of the raiyati land purchased by the plaintiff along with defendant no. 5 and 6 through registered sale deed dated 12.06.1982 and further the order dated 10.12.2014 passed by the D.C.L.R., Sadar Patna in Land Dispute Resolution Case No. 93 of 2011-12 against the plaintiff is illegal, unlawful without jurisdiction void and nullity in the eye of law and is not binding on the plaintiff and also sought temporary injunction against the defendants and they be restrained from demolishing the structure standing on the land mentioned in Schedule-II of the plaint. The plaintiff with proforma defendants, namely, Arun Kumar Mishra and Vimal Kumar Mishra jointly purchased a piece of land being an area of 7.5 decimals of plot no. 1457 and 1459 respectively of Khata No. 6342 and 326 in Touji No. 5123, Thana No. 2 situated at Mouza Mainpura, P.S. Patliputra, District Patna through a registered sale deed dated 12.06.1982. It is further contended that after purchase of the suit property, the name of the plaintiff and proforma defendants were mutated in the revenue records vide Jamabandi No. 10391 of 2007. After purchase, it was revealed that



a portion of the said land was acquired for 20 feet wide drain and two passage of 10 feet each passage through that land whereby the said purchased land was bifurcated into two parts. Accordingly, the plaintiff and proforma defendants constructed a house and 4 shops over the said land. Out of which, house was constructed south to the said drain and passage as well as 4 shops were constructed to the north of the said drain passage. It is further contended that in the year 1994, a partition took place amongst the plaintiff and proforma defendants in which house built towards northern side of the drain and one shop built towards southern side were allotted to the plaintiff whereas the rest of the 3 shops were allotted jointly in favour of proforma defendants. Adjacent north to the 4 shops owned and possessed by the plaintiff and proforma defendants, a three storied house was constructed in the year 1987 on the part of survey plot no. 1459 by the vendor of defendant no. 4/petitioner. The defendant/petitioner purchased the said property on 03.07.2010 from the said vendor and with ulterior motive and oblique purpose, a wrong recitals in the said sale deed was made with regard to the excess land having an area of 2 dhurs and 18 dhurki land which, in fact, never existed nor owned and possessed by the vendor of defendant/petitioner nor he ever asserted that prior to the execution of the sale deed, he was owning it.



Defendant no. 4/ petitioner started making claim over the said excess land on the basis of the said sale deed dated 03.07.2010 and filed a case bearing Bihar Land Dispute Resolution Case No. 93 of 2011-12 with a claim that the plaintiff encroached upon the part of the house and land of the road and have constructed shops thereon without making proforma defendants as a party in the said case. Though the land, in question, was jointly purchased by the plaintiff along with the proforma respondents, but the plaintiff and her husband were impleaded as party in the said case. After hearing, the learned Deputy Collector Land Reforms allowed the said case on 20.03.2012 and direction was given for removal of all the 4 shops from the land in question. Against that order, plaintiff had preferred appeal bearing Case No. 173 of 2012, which was dismissed vide order dated 28.02.2013 / 21.03.2013 by the Divisional Commissioner, Patna. Being aggrieved, the plaintiff filed C.W.J.C. No. 10125 of 2023 before this Court which too was dismissed on 15.05.2013 with liberty to move before Bihar Land Tribunal. Accordingly, the plaintiff preferred application before Bihar Land Tribunal vide B.L.T. Case No. 321 of 2013 which too was dismissed as withdrawn vide order dated 14.06.2013. The learned Tribunal has held that the aforesaid case is barred under Section 4 of the Bihar Land Dispute Resolution Act. The same was



dismissed as withdrawn to avail the proper remedy. The plaintiff again moved before this Court vide M.J.C. No. 3436 of 2013 for modification of order dated 15.05.2013 passed in C.W.J.C. No. 10125 of 2013 in terms of the liberty given by the learned Tribunal. The said modification application was heard and vide order dated 11.07.2013 passed by this Court direction was given to learned District Judge, Patna to verify the genuineness of respective sale deeds of the parties with a further direction of appointment of survey revisional commissioner for measurement of land and ultimately, the said modification application was dismissed vide order dated 25.07.2013. Against the aforesaid order dated 25.07.2013 passed in M.J.C., No. 3426 of 2013, the plaintiff preferred an appeal bearing L.P.A. No. 1052 of 2013 before this Court. The said appeal was allowed with following directions:-

“The order dated 11.07.2013 and 25.07.2013 passed on the basis of miscellaneous application filed in a disposed writ application are, therefore, held to be without jurisdiction as the court has become functus officio.”

4. The plaintiff under misconception again filed writ application challenging the order passed by the leaned Tribunal as well as the Divisional Commissioner and the said writ application



was dismissed vide order dated 19.09.2013 passed in C.W.J.C. No. 18093 of 2013 against which the plaintiff moved before this Court in L.P.A. No. 1289 of 2013 which was dismissed as withdrawn vide order dated 21.10.2013 given liberty to plaintiff for availing the alternative remedies.

5. On the other hand, the proforma defendants also filed a writ application vide C.W.J.C. No. 16583 of 2013 against the order dated 20.03.2012 passed by learned Deputy Collector Land Reforms, which was disposed of vide order 05.12.2013 by setting aside the impugned order passed by the learned D.C.L.R. for hearing the case after impleading the proforma defendants as parties. Accordingly, proceeding of Land Dispute Case No. 93 of 2011/2012 was heard and was disposed of vide order dated 10.12.2014 in favour of defendant no. 4 directing the plaintiff and defendant nos. 5 & 6 to remove the encroachment over the land in question. It is further contended that the proforma defendants preferred an appeal vide Land Dispute Appeal No. 633 of 2015 and 21 of 2015 before the Learned Commissioner, Patna.

6. Since the nature of dispute is complete civil nature involving the question of title with regard to the property in the suit for which only the civil court is competent, the plaintiff has chosen to move before civil court of competent jurisdiction for



adjudication with regard to the plaintiff's title to the property in suit. Hence, the aforesaid suit was filed against the State of Bihar and its officials and defendant no. 4/petitioner and proforma defendants.

7. On summons, defendant no. 4/petitioner appeared and filed a petition under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the plaintiff/ opposite party no. 1 suppressed the material facts with regard to the previous litigation in detail. It is further contended that title suit was filed in September, 2015 by suppressing the important observations of this Court made vide order dated 19.09.2014 passed in C.W.J.C. No. 3901 of 2014 which clearly stated that after the land acquisition proceeding in L.A. No. 50 of 1975-76, the vendor of the present plaintiff had no title to sale the land in excess of what she possessed. The plaintiff has lost up to the L.P.A. and she is trying to reopen the concluded proceeding relying on the order passed in the case of her brothers. It is further contended that the plaintiff has admitted in para 19 of the plaint that out of her vendor's 7.5 decimals land, 5 decimals land were acquired. Therefore, the plaintiff has only 2.5 decimals land left, but by the measurement report of Pleader Commissioner, the plaintiff is in possession of more land than what she should have



left after the land acquisition. The house of the plaintiff is in the southern side of Shivpuri Nala whereas the petitioner's house is in the north of Shivpuri Nala. The boundary disputes has already been decided under Bihar Land Dispute Resolution Act in favour of the petitioner, who also raised objection with regard to the maintainability of the suit. In such view of the matter, the plaint is vexatious, meritless based on irrelevant statement, concocted and imaginary story.

8. After considering the pleadings made in the plaint, the learned trial court rejected the petition filed by defendant no. 4/ petitioner under Order VII Rule 11 of the Code of Civil Procedure on 08.06.2016 and held that neither any part of the plaint seems to attract the provision of Order VII Rule 11 of the Code of Civil Procedure nor the petition filed by the defendant/petitioner has disclosed any grounds for rejection of plaint. It has been further held that on perusal of the petition of the defendant, it transpires that it is quite ambiguous that under what clause of Order VII Rule 11 of the Code of Civil Procedure, this petition has been filed because every clause contains different and independent ground for rejection, but the instant petition is lacking in disclosing or even indicating any such ground for rejection.



9. Being aggrieved by the order dated 08.06.2016 passed in Title Suit No. 463 of 2015, the petitioner (in person) filed the instant revision application assailing the impugned order on the ground that the matter in dispute having been settled by this Court in the writ case, the plaintiff has no cause of action for filing the suit. It is vehemently submitted that the plaintiff had filed the suit by concealing the order of this Court passed in C.W.J.C. No. 5340 of 2015 dated 22.07.2015, by which the writ was dismissed. Against the order dated 22.07.2015, the plaintiff preferred the appeal before the Division Bench which was decided on 11.04.2017 imposing a fine of Rs. 50,000/- for abusing the process of law and wasting precious time of this Court. It is further submitted that the learned trial court failed to appreciate that plaintiff has got no valid cause of action for the suit as the plaintiff case is vexatious, meritless and completely based on irrelevant statements and concealment of material facts.

10. The petitioner (in person) has further submitted that the opposite party no. 1 has mentioned about order dated 14.06.2013 passed in B.L.T. Case No. 321 of 2013, but she has failed to mention that the said case was dismissed as withdrawn. Thereafter she preferred C.W.J.C. No. 18093 of 2013. The same was found to be devoid of merit and, accordingly, the learned



Single Judge was pleased to dismiss the same on 19.09.2013. The learned Single Judge was pleased to observe that the instant matter in hand does not relate to title or adverse possession and was pleased to find that the matter relates to encroachment.

11. Opposite Party no. 1 aggrieved by the order passed in C.W.J.C. No. 18093 of 2013, preferred L.P.A. No. 1289 of 2013 which was also withdrawn. Accordingly, the L.P.A. was dismissed as withdrawn. The Division Bench did not give any finding nor made any observation with regard to availing the alternative remedy. The plaintiff concealed various orders passed by this Court which amounts to gross concealment of material facts. The order of this Court passed in writ case as well as L.P.A. has attained finality. The petitioner (in person) relied upon the decision in the case of *Bhagirath Prasad Singh @ Bachcha Babu vs. Ram Narayan Rai @ Ram Narayan Singh & Anr.* reported in (2013) 1 *PLJR* 738. In this case, this Court has held that suppression of material facts by the plaintiff by omitting and concealment is a ground for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

12. Reliance has also been placed in the case of *Sopan Sukhdeo Sable and Ors. vs. Assistant Charity Commissioner & Ors.* reported in (2004) 3 *SCC* 137. The Hon'ble Supreme Court



has held that omission of single material fact leads to incomplete cause of action and the averments in the plaints become bad. Order VII Rule 11 of the Code of Civil Procedure based on an independent remedy is available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The real object of Order VII Rule 11 of the Code of Civil Procedure is to keep out of courts irresponsible law suits and in case, court is prima-facie persuaded of the view that the suit is an abuse of the process of the court.

13. Further reliance has been placed on the judgment of the Supreme Court in the case of *T. Arivandandam vs. T. V. Satyapal & Anr.* reported in (1977) 4 SCC 467, in which the Hon'ble Supreme Court has defined in respect of exercising power under Order VII Rule 11 CPC and taking care that the pleadings mentioned in the plaint is fulfilled.

14. The petitioner (in person) has also relied on the judgment in the case of *Alok Ranjan Pandey & Ors. vs. Ram Bachan Choudhary and Ors.* passed in Civil Revision No. 564 of 2010 reported in 2015 SCC OnLine Pat 10057. In this case, this Court has held as follows;-

“The court below proceeded to decide as to whether there is a cause of action or not without considering that order 7 Rule 11(a) speak about “where the



plaint does not disclose cause of action” and not whether plaintiff has cause of action or not. Therefore it is the duty of the court to exercise jurisdiction under Order 7 Rule 11 CPC and pass appropriate order.”

15. In such view of the matter, the learned trial court has failed to exercise its jurisdiction.

16. On the other hand, learned counsel for the plaintiff/opposite party no. 1 submitted that there is neither legal and valid ground nor any valid ground is covered by any clause of Order VII Rule 11 of the Code of Civil Procedure and hence, there is no substance. It is further contended that title of the plaintiff and her brother could not be decided by the writ court or through B.L.T. Act. The title of the party could only be decided by the civil court. It has been held by this Court in the case of ***Maheshwar Mandal & Anr. vs. The State of Bihar & Ors.*** reported in ***(2014) 3 PLJR 281*** that the D.C.L.R. or any authority under the Bihar Land Dispute Resolution Act shall have no jurisdiction to assume the jurisdiction of civil court of competent jurisdiction nor can have the right to decide the question of title which is the exclusive jurisdiction of civil court. It is also settled principle of law that Order VII Rule 11 of the Civil Procedure Code does not permit consideration of any defence of the defendants rather it is to be decided on the averments made in the plaint alone and that those



averments will have to be assumed to be correct. The plaintiff claimed his right on the basis of registered sale deed executed on 12.06.1982. The claim of the plaintiff has to be decided on the basis of evidence and materials on record.

17. Having considered the rival submissions of the parties and the averments made in the plaint and objections raised by the defendant/petitioner, it is pertinent to mention the legal position arises for consideration in the instant revision application is whether an application under Order VII Rule 11 of the Code of Civil Procedure ought to be decided on the allegation in the plaint and suppression of material facts, if any, is a clear abuse of process of law and vexatious suit.

18. I will first briefly touch upon the law applicable for deciding an application Order VII Rule 11 of the Code of Civil Procedure which reads as under:-

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

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to 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 returned 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-paper 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-paper, 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.”

19. Plain reading of Order VII Rule 11 of the Code of Civil Procedure makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaints.



20. The trial court can exercise the power under Order VII Rule 11 of the Code of Civil Procedure at any stage of the suit before registering the plaint or after issuing summons to the defendants at any time before the conclusion of the trial for the purpose of deciding the application under clause (a) & (d) of Rule 11 of Order VII of the Code of Civil Procedure. The averments in the plaint are germane; the pleas taken by the defendant in the written statement or application under Order VII Rule 11 of the Code of Civil Procedure would be wholly irrelevant at this stage. This view has been expressed by the Hon'ble Supreme Court in the case of *Saleem Bhai & Ors. Vs. State of Maharashtra & Ors.* reported in *(2003) 1 SCC 557*.

21. So far suppression of material facts is concerned, it cannot be a only ground for rejection of plaint. The view of the Hon'ble Supreme Court in the case of *T. Arivandandam (Supra)* shall be enough to answer this question of law. Para 5 of the said judgment reads as under:-

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the



law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial court would insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage.”

22. The mere suppression of fact alone shall not be the ground for holding that the plaint lacks pleadings regarding cause of action when a plaint contains clear pleadings spelling out the cause of action. The question whether such a cause of action is true or not, cannot be the scope of the inquiry in an application under Order VII Rule 11 of the Code of Civil Procedure. Whether there is any suppression of material facts can be ascertained only from the pleadings made in the written statement and the evidence to be adduced by the parties. The Hon’ble Supreme Court has held that suppression of material facts alone shall not entitle a defendant to have the plaint rejected as one lacking in cause of action under Order VII Rule 11 of the Code of Civil Procedure.



23. Moreover, reading of the Rule 11 of Order VII of the Code of Civil Procedure will show that neither suppression of fact nor misrepresentation, nor even fraud, has been made a ground for rejection of plaint. Even the rule does not include abuse of process of court as a ground for rejection of plaint. Clause (a) & (d) deals with absence of disclosure of cause of action and the suit appearing from the statement in the plaint to be barred by any law. Whether the plaint discloses a cause of action for the suit or not, has to be decided only based on the averments made in the plaint and the document produced along with the plaint. The cause of action alleged may not be true or may be deliberate falsehood. The court dealing with a petition under Order VII Rule 11 of the Code of Civil Procedure cannot go into the question whether cause of action alleged in the plaint is true or false and take a decision based on the defence plea taken by the defendant or based on the documents produced by the defendant. On the other hand, there may be a case in which the pleadings in the plaint itself having the effect of destruction of the plea regarding the cause of action and making such plea regarding cause of action illusory. Only in such view of the case, the court has to decide whether cause of action alleged in the plaint is real or that the plaint has been drafted in an intelligent manner to camouflage an illusory cause of action as a



real cause of action. The court can reject the plaint on the ground that the plaint does not disclose a cause of action.

24. The scope of Rule 11 of Order VII of the Code of Civil Procedure has been explained in various decisions and the legal principles deducible. The material to be considered for rejecting the plaint has been dealt with in the case of ***Dahiben vs. Arvind Bhai Kalyanji Bhanusali*** reported in **(2020) SCC ONLINE 563**. The Apex court has settled the principle in para 12.6 & 12.7 which reads as under:-

“12.6- At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.”

25. The test was laid down in ***Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success I & Anr.*** reported in **(2007) 5 SCC 614**, which reads as under:-

“139- Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be



correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. In Hardesh Ores (P.) Ltd. Vs. Hede & Co.5 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words.”

26. The law has been settled by the Apex Court in various decisions that while considering an application under Order VII Rule 11 of the Code of Civil Procedure only plaint is to be looked into. In the case of ***Bhau Ram Vs. Janak Singh & Ors.*** reported in ***2012 (6) SCALE 530***, the Hon'ble Apex Court has relied on various decisions of the Hon'ble Supreme Court i.e. in the case of ***C. Natarajan Vs. Ashim Bai & Anr.*** reported in ***(2007) 14 SCC 183***, ***Ram Prakash Gupta Vs. Rajeev Kumar Gupta & Ors.*** reported in ***(2007) 10 SCC 59***; ***Hardesh Ores (P). Ltd. Vs. Hede & Company*** reported in ***(2007) 5 SCC 614***; ***Mayar H.K. Ltd. & Ors. Vs. Owners & Parties; Vessel M.V. Fortune Express and Ors.*** reported in ***(2006) 3 SCC 100***; ***Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.*** reported in ***(2004) 3 SCC 137***; ***Saleem Bhai & Ors. Vs. State of Maharashtra & Ors.*** reported in ***(2003) 1 SCC 557***.



27. The view of the Hon'ble Supreme Court indicated in the aforesaid decisions shall be enough to answer the question of cause of action and barred by any law under Order VII Rule 11 (a) & (d) of the Code of Civil Procedure. The mere suppression of fact alone shall not be the ground for holding that the plaint lacks pleadings regarding cause of action. Suppression of material facts can be ascertained only from the pleadings made in the written statement and the evidence to be adduced by the parties. In view of the decision of the Hon'ble Apex Court mentioned above, any suppression of materials facts alone shall not entitle a defendant to have the plaint rejected as one lacking in cause of action under Order VII Rule 11 of the Code of Civil Procedure.

28. In the light of the decision in case of *T. Arivandandam (Supra)*, the Apex Court has held that if clever drafting has created, the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X CPC.

29. So far the provision of Order X Rule 1 of the Code of Civil Procedure is concerned, admission made by a party under this rule is conclusive against him. Such a statement is in the same position as written pleadings of the parties. A statement under Rule 2 of Order 10 would certainly be of a great value and has to be



considered in the decision of the case. But there is a clear difference between the statement under Rule 1 and 2. A statement under Order 10 Rule 1 is recorded by court in order to clarify the pleadings with regard to such allegation of fact which are not expressly or by necessary implication admitted or denied by the party against whom they are made. The said statement can be either of the party himself or of his pleader who represent him, whereas a statement under Order 10 Rule 2 is recorded in order to elucidate matters in controversy. In the suit it can be either the statement of the party in person or of any other person who is accompanying the party. The substance of the said statement is to be reduced into writing and it shall form a part of the record. Once a statement under Order 10 Rule 2 of the Code of Civil Procedure is recorded, it becomes part of the record and can be looked into and relied upon by the court.

30. In such view of the matter, the oral evidence under Order 10 Rule 2 of the Code of Civil Procedure might have been admitted during evidence. Such admission may lead to dismissal of the suit on a preliminary issue or on merits in consideration of all the issues.

31. In view of the preceding analysis, it is apparent from the plaint that the cause of action arose on the basis of liberty



given to the plaintiffs in L.P.A. No. 1289 of 2013, which was disposed of on 21.10.2013. The said case was withdrawn. The said order reads as under:-

*“After some argument, leave is sought to withdraw the appeal for availing such alternative remedies in the law as the Appellant may be advised.
The appeal is dismissed as withdrawn.”*

32. It is also mentioned in the plaint with regard to the cause of action that lastly on 13.09.2015 when the plaintiffs have been advised to take recourse of civil suits since that is the only competent and lawful recourse in the matter. The said cause of action is true or not cannot be the scope of the enquiry in an application under Order VII Rule 11 of the Code of Civil Procedure.

33. So far suppression of material facts is concerned, it is true that the suppression of material facts is a clear abuse of process of law and vexatious. However in so far as Order VII Rule 11 is concerned, the contents in the plaint should alone be considered. The other material should be considered and looked into first at the hearing of the suit in the proceeding under Order X Rule 2 of the Code of Civil Procedure, and admission made by a party under Order X of the Code of Civil Procedure is conclusive against him. Moreover, a duty has been cast on the shoulder of the



court to record a statement under Order X of the Code of Civil Procedure, in view of Order XIV Rule 1(5) of the Code of Civil Procedure which reads as under:-

“At the first hearing of the suit, the court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.”

34. A statement under Order X Rule 2 is recorded in order to elucidate matter in controversy, in the suit it can be either the statement of the party in person or of any other person who is accompanying that party. The substance of the said statement is to be reduced into writing and it shall form a part of the record.

35. The import of the decision in the case of *T. Arivandandam (supra)* in the present situation elicits the observations, the matter shall be considered at the first hearing by examining the party searchingly under Order X of the Code of Civil Procedure.

36. On analysis of the entire facts and the averments made in the plaint, it is clear that cause of action has been specifically mentioned in the plaint. The petition under Order VII



Rule 11 filed by the defendant without mentioning the sub-clause makes its ambiguous. Further the claim of the defendant could be looked into by adverting to Order X of the Civil Procedure Code especially with regard to suppression of facts which could further be decided in view of Order XIV Rule 1(5) of the Civil Procedure Code. However, it is made clear that the contention between the parties have nowhere been stated by the defendant/petitioner that the matter in controversy has already been decided by any competent civil court.

37. Since the learned trial court has not gone into the principle laid down by the Hon'ble Apex Court in the case of *T. Arivandandam (supra)*, wherein, the order deals in two parts. The first part deals with Order VII Rule 11 and the second part deals with Order X of the Civil Procedure Code, if illusion is created.

38. The instant matter requires consideration invoking Order X of the Civil Procedure Code by recording oral statement whereafter if need arises then recourse of Order XIV Rule 1(5) of the Civil Procedure Code has to be adverted to decide it as a preliminary issue.

39. In the light of the above observation, the order dated 08.06.2016 passed in Title Suit No. 463 of 2015 by the learned



Sub-Judge-1, Patna is set aside and the learned trial court is directed to decide the matter according to law.

(Khatim Reza, J)

premchand/-

AFR/NAFR	AFR
CAV DATE	19.07.2024
Uploading Date	05.09.2024
Transmission Date	N/A

