
(2001) 11 PAT CK 0018
In the Patna High Court
Case No : C.R. No. 443 of 2001

Dharni Dhar Pd. Sinha

APPELLANT

Vs

Mostt. Ram Dulari Devi

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11

Citation : (2001) 4 PLJR 692

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—Heard learned Counsel for the parties.

2. This revision application is directed against the order dated 23.11.2000 passed by the court below, whereby the petition filed by the Defendant Petitioner under Order VI Rule 16 of the CPC to strike out para 10 of the plaint has been rejected.

3. The Plaintiff-Petitioner has filed a suit for redemption of the mortgaged deed in the year 1981. Admittedly, the Petitioner has not filed written statement uptill now. Earlier he had filed objection under Order VII Rule 11 of the CPC to reject the plaint by referring para 10 of the plaint on the ground that there was nothing to support the assertion made in para 10. The objection of the Petitioner was rejected by the trial court. The Petitioner came to this Court in C.R. No. 1340 of 1996 which was also dismissed on 1.5.1997. Thereafter, he filed an application under Order VI Rule 16 of the CPC to reject para 10 of the plaint.

4. Order VI Rule 16 of the CPC speaks of striking out pleadings which may be unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise an abuse of the process of the court. In para 10 of the plaint, the Plaintiff has asserted that Binda Prasad was hard pressed and so he sold the equity of redemption through registered deed of sale dated 30.1.1956 to the Plaintiff and received Rs. 500/- as

price of equity of redemption.

5. learned Counsel for the Petitioner submitted that there is no document to prove the assertion made in para-10 of the plaint and as such it is unnecessary pleading which should be deleted.

6. The pleading is neither a statute nor consists of evidence. It is only assertion of facts which the Plaintiff has no prove at the stage of trial. Whether he has evidence to prove certain fact or not has to be seen at the trial and that pleading cannot be termed as unnecessary. J The trial court rightly held that the Defendant having failed to get the suit dismissed on one ground has taken other plea to delay the disposal of the suit. I fully agree that the view taken by the court below that the whole attempt made by the Petitioner is to delay the disposal of the suit by taking the plea which is not at all permissible in law.

7. In the result, there is no merit in this revision application and it is accordingly dismissed.