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C.R.No.60 of 2017

21.02.2017

Shri P.K.Mishra, counsel for petitioner.

Shri Ajeet Singh, counsel for respondents.

Heard on admission.

This revision has been preferred under section 115 of CPC against the order dated 19.1.2017 passed by Civil Judge, Class-II, Pipariya, District Hoshangabad in Civil Suit No.13-A/2015, whereby the objection of petitioner/defendant under Order 7 Rule 11 CPC has been dismissed.

It is argued by learned counsel for petitioner that in plaint the plaintiffs have not clearly stated when the cause of action arose. The plaint does not disclose cause of action. As per Order 7 Rule 11 CPC where it does not disclose a cause of action, plaint shall be rejected. The trial Court has wrongly dismissed the objection of petitioner in this regard.

The petitioner has filed the copy of the plaint and written statement. The plaintiffs have filed a suit for declaration of their share in disputed land alongwith partition and possession. It is pleaded that the defendant no.1 has got the entire land mutated in her name without notice to plaintiffs. Against this mutation the plaintiffs have preferred proceedings before revenue authorities. The defendant no.1 is denying the right of plaintiffs.

Hon'ble Apex Court in the case of **Church of Christ Charitable Trust and Educational Charitable Society Vs.**

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Ponniamman Education Trust [2012(4) MPLJ 578] in para 8 observed as under :-

"The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

Whether the plaint discloses the cause of action has to be decided by taking averments in totality and by assuming them to be factually correct. The principle of taking full and comprehensive view of pleadings has to be applied.

Thus, as per averments of plaint, it appears that the disputed land is joint family property of the plaintiffs and defendant no.1, in which plaintiffs have share and the dispute arose when the entire land was recorded in the name of defendant no.1.

Hon'ble Apex Court in the case of **M.Venkataramana Hebbar Vs. M.Rajagopal Hebbar** (AIR 2007 SC (Supp) 43) held that :

"A co-owner can cause severance in the status of joint family by expressing his unequivocal intentions to separate. Such intention can be expressed even by filing a suit for partition."

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One can seek partition anytime from joint family property. No limitation is prescribed for filing of suit for partition. Therefore, it is not necessary to state when first time the cause of action arose. In the dispute relating to partition of property the cause of action arose continuously. Therefore, the trial Court has not committed any illegality in rejecting the objection of the plaintiff, which has been raised at the time of final arguments, after completion of evidence of both the parties.

Thus, this revision is dismissed.

(Anurag Shrivastava)
Judge

M.