

**ORISSA HIGH COURT  
CUTTACK**

CRP No.83 of 2007

From the order dated 20.7.2007 passed by the learned Civil Judge (Senior Division), Patnagarh in C.S. No.68 of 2004.

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Bipin Bihari Panigrahi	.....	Petitioner
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-versus-

Ramnarayan Panigrahi & others	.....	Opp. parties
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For petitioner : M/s.S.Dash, S.Mishra,  
S.K.Mohanty, B.Mohanty,  
S.S.Satpathy, Miss. S.Mishra,  
B.S.Panigrahi & S.Kashyap

For Opp. parties: M/s.Gautam Mukharji,  
1, 3 & 5 P.Mukharji, A.C.Panda,  
M.R.Barik, S.Patra,

B.Mishra

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P R E S E N T:

**THE HONOURABLE KUMARI JUSTICE SANJU PANDA**

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Date of Judgment : 28.07.2008

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**S. Panda, J.** This civil revision is directed against the order dated 20<sup>th</sup> July, 2007 passed by the learned Civil Judge (Senior Division), Patnagarh in CS No.68 of 2004.

**2.** The brief facts of the case are as follows:

In C.S. No.68 of 2004 the present petitioner-Defendant no.2 filed a petition under Order 7 Rule 11 of the Civil Procedure Code for rejection of the plaint as the suit was under valued. He stated in the said petition that the plaintiff

had paid court fees of Rs.300/- for the suit for partition and other consequential relief i.e. to declare his ownership over the suit land, but as he had not paid the court fees as required under Section 7(4)(c) of the Court Fees Act, his plaint was liable to be rejected. The court below did not consider the said petition.

3. Learned counsel for the petitioner submitted that this Court in exercise of the inherent jurisdiction under Article 115 of the Civil Procedure Code may set aside the impugned order and reject the plaintiff's suit.

4. The learned counsel for the present opposite party no.1-plaintiff submitted that rejection of a plaint for non-payment of court fees is not the usual procedure. The Court can call for the plaintiff to amend the plaint and direct to pay the proper court fees. He further submitted that this revision is not maintainable. So far as the merit of the case is concerned, he submitted that the plaintiff filed the suit for partition and did not pray for any consequential relief. Rather, he only prayed for to carve out his share and declare his title which comes within the prayer for partition. Thus, interference of this Court is not warranted.

5. This Court heard the rival submissions of the parties quite at length. From the facts and circumstances of the case, as stated above, it appears that the plaintiff filed the suit for partition and paid the court fees. Defendant no.2 is the husband of defendant no.1 who filed a similar petition under Order 7 Rule 11 of the Civil Procedure Code on 11<sup>th</sup> August, 2005 and the said petition was disposed of by the court below on 26.6.2006 observing that the valuation of the suit or the court fees required to be paid thereon cannot be decided without proper enquiry and the question of payment of court fees can be taken up as an issue and if any

court fee is required to be paid that can be realized from the plaintiff by giving a direction to that effect in the judgment.

6. Valuation of the suit suggested by the plaintiff prima facie determines the jurisdiction. Under-valuation of a suit may alter the jurisdiction of the court altogether and may cause loss of revenue to the State. Order 7, Rule 11 of the Civil Procedure Code mandates rejection of the plaint in case the relief claimed is under-valued. The issue of valuation shall be decided by the court in which the plaint is filed. The object of the provision is not to arm the litigant with a weapon of technicality but to secure the revenue. Unless the question of payment of court-fees involves also the question of jurisdiction of the court, the defendant is usually not interested in such dispute. If there is a deficiency of court fee, the court must give opportunity to make the deficiency court fee paid within the specific time.

7. Since the court below has done the substantial justice and the defendant has a right to challenge the same in the appeal against the impugned judgment and decree, this Court is not inclined to interfere with the impugned order dated 20<sup>th</sup> July, 2007 passed by the learned Civil Judge (Senior Division), Patnagarh in CS No.68 of 2004 at this stage exercising its revisional jurisdiction under Section 115 of the Civil Procedure Code.

The civil revision is accordingly dismissed.

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**Sanju Panda, J.**

July 28 , 2008 / *Pradeep*.