

**HIGH COURT OF ORISSA: CUTTACK**

**W.P. (C) NO. 6267 OF 2011**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Liyakata Ali Khan & others                      .....                      Petitioners

-Versus-

Usman Khan    .....                      Opposite Party

For Petitioners                      --                      M/s.Mahadev Mishra,  
R.R.Sahoo, Miss. Mamata Mishra,  
B.K.Mishra, S.B.Mohanty,  
G.C.Bhuyan.

For Opposite Party --                      M/s.S.C.Nayak, P.K.Biswal,  
S.K.Debta, R.C.Mishra, P.C.Das,  
N.Behera, J.Sahu, P.R.Sahoo,  
A.K.Rout (Sole opposite party)

**PRESENT:**

**THE HONOURABLE SHRI JUSTICE B.K.MISRA**

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**Date of judgment: 31.08.2012**

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**B.K.MISRA, J.**                      The present petitioners being aggrieved by the order dated 24.12.2010 passed by the Civil Judge (Jr.Divn.), Jajpur in Civil Suit No.40 of 2010 disallowing the prayer under Order 7, Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'C.P.C.') as well as under Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (hereinafter referred to as 'O.C.H.P.F.L. Act') have filed this writ petition.

2.                      The present opposite party as plaintiff instituted Civil Suit No.40 of 2010 in the court of Civil Judge (Jr.Divn.), Jajpur praying

therein for declaration of right, title and interest over the suit land and confirmation of possession. He also prayed for permanent as well as mandatory injunction prohibiting the defendants (present petitioners) from encroaching upon or causing any obstruction to the passage over the suit land. The present petitioners as defendants entered appearance and have already filed their written statement in the court below. Before the suit could be made ready for hearing a petition was filed by the present petitioners under Order 7, Rule 11 of the C.P.C. as well as under Section 51 of the Consolidation Act for rejection of the plaint on the ground of undervaluation of the suit property and proper court fee having not been paid and also that the suit is not maintainable as the parties had worked out their rights before the Consolidation Authority and therefore, the decision of the Consolidation Authority when binding on the parties that cannot be raised again in the Civil Court. The prayer which was made by the present petitioners for rejection of the plaint was opposed to by the plaintiff in the court below. The learned Civil Judge (Jr. Divn.), Jajpur after hearing the parties passed the impugned order at Annexure-1.

3. I have heard learned counsel for the petitioners as well as opposite party. Sri Mahadev Mishra, learned counsel appearing for the petitioners contended that the order is contrary to the provisions contained under Order 7, Rule 11 of the C.P.C. and when the suit was grossly undervalued and proper court fees not paid the plaint should have been rejected and besides that when the relief of injunction is dependant on the title and possession to the property in question and

when the parties have already worked out their rights before the Consolidation Authorities, the same cannot again be agitated before the Civil Court. It was also contended that when the trial court did not consider the plaint averments the impugned order cannot be sustained and in that context reliance was placed in a decision of this Court as reported in **2010 (1) OLR 503, Mr. B.S.Saxena -v- Arunima Kumari and others**. By placing reliance on the aforesaid decision it was very strenuously urged by Mr. Mishra, learned counsel for the petitioners that the impugned order be set aside and the matter be remitted back to the court below for re-examination of the same by keeping in mind the ratio decided by the Apex Court in the case of **Saleem Bhai -v- State of Maharashtra reported in (2003) 1 SCC 557**.

4. Mr. S.C.Nayak, learned counsel appearing for the opposite party urged that the impugned order suffers from no infirmity and the Court has rightly disallowed the prayer of the petitioners who as defendants prayed for rejection of the plaint.

5. I have perused the materials on record including the impugned order at Annexure-1. Order 7, Rule 11 of the C.P.C. reads as follows:-

“R.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 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 ;

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.”

6. The law is quite well settled that the provisions contained in Rule 11, Order 7 of the C.P.C. are imperative and can operate at any stage of the suit. It is manifestly clear from the provisions contained in Order 7, Rule 11(b) of the C. P.C. that the Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and after determination of correct value of the relief requires the plaintiff to correct his valuation within a time to be given by the Court and if plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected.

7. In the instant case, while filing the suit i.e. Civil Suit No.40 of 2012 the plaintiff had valued the suit at Rs.300/- for declaration of right, title, interest and confirmation of possession, Rs.100/- for declaration of easementary right and for permanent injunction and Rs.100/- for mandatory injunction and accordingly had paid the

required court fees. The defendants, namely the present petitioners in their written statement while denying the plaint averments with regard to the possession of the suit property by the petitioners also raised the question that the suit was not properly valued and proper court fee have not been paid. What is the value of the suit property and what should be the valuation, the written statement is completely silent. The petitioners, who are the defendants in their petition under Order 7, Rule 11 of the C.P.C. have averred that the present market value of the suit land would be more than Rs.30,000/- and therefore, the learned Civil Judge (Jr. Divn), Jajpur has no pecuniary jurisdiction to try the suit in question.

8. There is no controversy over the position of law that in a suit for declaration with consequential relief falling under Section 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purpose of Court Fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same. In the instant case, the present petitioners as defendants in Civil Suit No.40 of 2010 in the court below have questioned the valuation as put by the plaintiff in the said suit. Thus have raised an issue for decision. The issue has to be decided on evidence to be led by the parties and hence, it is not a pure question of

law relating to jurisdiction of the Court, but it is a pure issue of fact. The learned trial court has recorded reasons for not accepting the prayer of the defendants for rejection of the plaint on the ground that the suit is undervalued since no material was placed before it by the defendants as to what is the cost of the suit land and what is its valuation. Therefore, where an issue of jurisdiction is a question of fact or a mixed question of law the same cannot be decided as a preliminary issue and it should be decided on merit along with other issues. Any question touching upon the jurisdiction of the Court does not automatically become an issue of law, as this question invariably depends upon the factual aspects. **1992 (1) OLR 154, Sri Ainthi Dalabehera and others -v- Government of Orissa, represented by the Secretary, General Administration Department, Bhubaneswar and others** and **1994 (1) OLR 391, Jogi Sahu and others -v- Umesh Chandra Mishra and others.**

9. Now comes the next point as to whether the suit as laid could be entertained by the Civil Court in view of the provisions in Section 51 of the Consolidation Act. Section 51 makes provisions regarding bar of jurisdiction of Civil Courts wherein it provided that subject to the provisions contained in Section 4(3) and Section 7(1) all questions relating to right, title, interest and liability in land lying in the consolidation area except those coming within the jurisdiction of the revenue Court or authorities under any local law for the time being in force shall be decided under the provisions of the Act by the appropriate authority and no Civil Court shall entertain any suit or

proceedings in respect of any matter which an officer or authority empowered under the Act is competent to decide.

10. It is the settled position of law that ouster of jurisdiction of the Civil Court is not to be readily inferred and care should be taken to see that the person aggrieved is not left without a forum to redress his grievance. In the instant case, the present opposite party (plaintiff) has not only prayed for declaration of his right, title, interest and confirmation of his possession over the suit land, but also prayed for permanent as well as mandatory injunction. The plea which is being raised by the defendants that since the parties have worked out their rights before the Consolidation Authorities and the relief of injunction which has been sought for by the present opposite party as plaintiff in the court below is not an independent relief as the same is dependant on the question of title and therefore, the suit is barred by the principle of res judicata coming within the meaning of Section 51 of the Consolidation Act. The question that has been raised by the petitioners as defendants in the court below can only be considered by the court below when the hearing of the suit would be taken up by framing an issue, if so considered. **1990 (1) OLR 496, Akuli Mallik @ Jena -v- Kusa Jena and others, 58 (1984) CLT 481, Iswar Dehury -v- Suchi Dei and others.**

11. It is trite law that the Consolidation Authorities are not competent to grant the relief of injunction and thus in such view of the matter, the learned Civil Judge (Jr. Divn.), Jajpur has rightly held that he has jurisdiction to try the suit and I find no infirmity in the said

impugned order at Annexure-1. In my humble view, there is no point in remanding the matter back to the court below for reconsideration of the prayer of the present petitioners as has been prayed for by Mr. Mishra. In view of my aforesaid observations, the impugned order suffers from no illegality and calls for no interference. In the premises, the writ petition being devoid of merit stands dismissed. No costs.

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**B.K. Misra, J.**

***Orissa High Court, Cuttack.  
The 31st August, 2012/RNS.***