

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**C.M.P.No. 878 of 2022**

1. Smt. Jyotshna Mishra  
2. Sujit Kumar Mishra ..... Petitioners  
Versus  
Gour Baran Ojha ..... Opp. Party  
-----

**CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Petitioners : Mr. Ashim Kumar Sahani, Advocate  
For the Opp. Party : Md. Nasim Akhtar, Advocate  
-----

**Order No. 06/ dated 22.10.2024**

On behalf of petitioner, learned Counsel Mr. Ashim Kumar Sahani and on behalf of Opp. Party, learned Counsel Md. Nasim Akhtar are present.

2. This C.M.P. has been preferred on behalf of the petitioner assailing the order dated 22.06.2022 passed by the learned Civil Judge, Junior Division, Bokaro in Original Suit No. 05 of 2022 whereby the application for the petitioner/defendant under Order 7 Rule 11-D of C.P.C. was rejected.

3. The learned Counsel for the petitioner has submitted that on behalf of plaintiff suit for declaration of title on the basis of adverse possession and for the relief of injunction was instituted by the plaintiff-Gour Baran Ojha which was registered by the learned Civil Judge, Junior Division, Bokaro vide order dated 10.01.2022 which is Annexure No.4 of this petition.

4. It is further submitted that the learned court-below has rejected this application of petitioner under Order 7 Rule 11-D of C.P.C. on the ground that the suit has not been admitted as yet. As such the application under Order 7 Rule 11-D of C.P.C. was not maintainable.

5. The learned Counsel for the respondent defended the impugned order.

6. On behalf of petitioner the copy of the plaint of Original Suit No. 5 of 2022 has been annexed which is as Annexure No.1 of this petition. From the same it transpires that the plaintiff Gour Baran Ojha has instituted suit against Smt. Jyotshna Mishra and Sujit Kumar Mishra with the prayer to declare his title in the property in question on the basis of adverse possession and along with this relief two more reliefs are also sought by the plaintiff. This very suit was registered by the learned court of Civil Judge, Junior Division, Bokaro on 10.01.2022 which is evident from the order dated 10.01.2022 passed by the learned Civil Judge, Junior Division, Bokaro and is the Annexure No.4 of this petition whereby the learned court-below after having registered the suit has also sought the report of Sirestedar.

7. In the very suit the written statement was also filed on behalf of defendant which is Annexure No.2 of this petition.

8. Thereafter on behalf of defendant an application under Order 7 Rule 11-D of C.P.C. read with 151 of C.P.C. was also moved which is Annexure No.3 of this petition.

9. From the perusal of the very impugned order, it is found that the very application under Order 7 Rule 11-D of C.P.C. of the defendant was not decided by the learned court-below on merit rather it was decided being not maintainable on the ground that the suit has not been admitted. The learned Trial Court has given the reasoning against the fact and also against the law in regard to being not maintainable this application under Order 7 Rule 11-D of C.P.C.

10. **Once the suit has been instituted and the same has been registered and notice has been issued to the defendant, the defendant has right to move the application under Order 7 Rule 11-D of C.P.C. for rejection of the plaint even without filing the written statement.**

But in this case the written statement has already been filed on behalf of the defendant and the application under Order 7 Rule 11-D of C.P.C. was very much maintainable. As such the impugned order passed by the learned court-below bears infirmity and same needs interference. Accordingly, this C.M.P. deserves to be allowed.

11. This C.M.P. is allowed. The impugned order passed by the court-below is set aside and the learned court-below is

directed to decide the application under Order 7 Rule 11-D of C.P.C. of the petitioner/defendant afresh after affording opportunity to both the parties of hearing.

**(Subhash Chand, J.)**

P.K.S. A.F.R.