

Court No. - 5

Case :- CIVIL REVISION No. - 14 of 2024

Revisionist :- Ramesh Agarwal

Opposite Party :- Goklendra Bahadur Singh And Ors.

Counsel for Revisionist :- Agendra Sinha

Hon'ble Abdul Moin,J.

1. Heard Shri Agendra Sinha, learned counsel for the revisionist.

2. The instant revision under Section 115 Code of Civil Procedure has been filed against order dated 17.02.2024 passed by learned trial court wherein the application under Order 7 Rule 11 of Code of Civil Procedure filed by the revisionist, who is the respondent before the learned trial court, has been rejected.

3. The contention of learned counsel for the revisionist is that a suit has been filed by the respondent herein / plaintiffs before the learned trial court praying for a mandatory and permanent injunction. The defendants put in appearance and filed an application under Order 7 Rule 11 Code of Civil Procedure, a copy of which is annexure 2 to the revision. Various grounds were indicated in the said application as to why the said suit was not maintainable.

4. The learned trial court vide the order impugned dated 17.02.2024 was of the view that as upon filing of an application under Order 7 Rule 11 Code of Civil Procedure it is only the plain reading of the averment made in the plaint which are to be seen from it has to be derived as to whether the suit itself is maintainable or not, has proceeded to reject the application filed by the defendants / revisionists herein.

5. Being aggrieved the instant revision has been filed.

6. The contention of learned counsel for the revisionist is that the defendants had raised various grounds including the ground that the suit was barred by limitation and that no cause of action has accrued to the plaintiff to file the said suit as they were not having any title over the land in dispute. However learned trial court has conveniently omitted the said grounds and passed the impugned order rejecting the application filed by the revisionist under Order 7 Rule 11 Code of Civil Procedure which is legally unsustainable in the eyes of law.

7. Having heard learned counsel for the revisionist and having perused the record it emerges that upon filing of a suit of

mandatory and permanent injunction by the plaintiffs, the defendants / revisionist herein filed an application under Order 7 Rule 11 Code of Civil Procedure raising various grounds of the suit not being maintainable including no cause of action having arisen and that the suit was barred by limitation. The learned trial court was of the view upon consideration of the application under Order 7 Rule 11 Code of Civil Procedure that if from a bare perusal of the plaint itself, a cause of action arises accordingly the suit is not liable to be dismissed.

8. Hon'ble Supreme Court in the case of *Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust*, (2012) 8 SCC 706 with regard to consideration of an application under Order 7 Rule 11 Code of Civil Procedure has held as under:

"6. Since the Appellant herein, as the first Defendant before the trial Judge, filed application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:

Order VII Rule 11 of the Code:

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 to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned 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;

(e) where it is not filed in duplicate;

(f) where the Plaintiff fails to comply with the provision of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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.

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the Plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the Defendants or at any time before the conclusion of the trial. This position was explained by this Court in *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was held as under:

9. A perusal of Order VII Rule 11 Code of Civil Procedure makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 Code of Civil Procedure at any stage of the suit - before registering the plaint or after issuing summons to the Defendant at any time before the conclusion of the trial. **For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane;** the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 Code of Civil Procedure cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court....

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. **In other words, what needs to be looked into in deciding such an application are the averments in the plaint.** At that stage, the pleas taken by the Defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett and Co. Ltd. v. Ganesh*

Property (1998) 7 SCC 184 and *Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.* (2006) 3 SCC 100.

7. It is also useful to refer the judgment in *T. Arivandandam v. T.V. Satyapal and Anr.*: (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

5. ...The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. and if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of Civil Procedure An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them....

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

(emphasis by the Court)

9. Likewise, Hon'ble Supreme Court in the case of **Kum. Geetha D/O Late Krishna and others vs Nanjundaswamy and others**, AIR (2023) SC 5516 has held as under:

"6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, Code of Civil Procedure² and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* (2020) 7 SCC 366, as follows:

23.2. The remedy Under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily

dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation Under Rule 11(a), the court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words: (SCC p. 324, para 12)

12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the Respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

...

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the Defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power Under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power Under Order 7 Rule 11 Code of Civil Procedure.

23.14. The power Under Order 7 Rule 11 Code of Civil Procedure may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the Defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter

must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in Clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application Under Order VII Rule 11 of the Code of Civil Procedure must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

(emphasis by the Court)

10. From perusal of judgements of Hon'ble Supreme court in the case of **Church of Christ Charitable Trust & Educational Charitable Society (supra)** and **Kum. Geetha (supra)** it emerges that Hon'ble Supreme Court has laid down that for the purpose of deciding an application under Order 7 Rule 11 CPC the averments in the plaint are germane i.e. in order to consider the said application the Court is to look into the averments in the plaint and if from a perusal of the plaint the cause of action is seen to have arisen and the plaint is not vexatious and meritless and that the assertions made in the plaint are not contrary to the statutory law and where the averments made in the plaint are taken to be correct in the entirety a decree would be passed then the application under Order 7 Rule 11 CPC would not merit the plaint to be dismissed.

11. The order of learned trial court indicates that learned court has exercised its mind and from perusal of the plaint it has arrived at a finding of complaint being maintainable and hence has rejected the application under Order 7 Rule 11 CPC.

12. Keeping in view the aforesaid discussion as well as the law laid down by Hon'ble Supreme Court in the cases of **Church of Christ Charitable Trust & Educational Charitable Society (supra)** and **Kum. Geetha (supra)**, no case for interference is made out. Accordingly, the revision is **dismissed**.

Order Date :- 14.3.2024/J.K. Dinkar