

INTHE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RSA 3/2023
CM(3877/2023)

Dated: 28.05.2025

MOHAMMAD AKBAR SHE

...Appellant(s)/Petitioner(s)

Through: Mr. Tariq M. Shah, Advocate

Vs.

ABDUL RAZAQ SEH AND ORS

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

JUDGMENT (ORAL)

1. This appeal is directed against judgement dated 01.04.2023 passed by the court of Principal District Judge, Shopian (for short "Appellate Court") passed in an appeal titled as Ab. Razaq Seh and others vs. U.T. of J&K and others" and for setting aside the matter, with further prayer to uphold the order dated 18.07.2022 passed by the court of Sub Judge, Shopian in a suit titld as Ab. Razaq Seh and others vs. U.T. of J&K and others.
2. Heard learned counsel for the appellant and perused the record on file, and considered the matter.
3. A suit was filed by plaintiffs/respondents herein before Sub Judge, Shopian (Trial Court) seeking following relief:

"...In the premises, it is as such prayed that after calling the defendants and after proper trial of the suit, a decree for declaration declaring the plaintiffs as legal owner of land measuring 11 Kanals 12 Marla 06 Sarsai falling under S. No. 4, land measuring 03 Marla

falling under S. No. 197, land measuring 1 Kanal 13 Marla 07 Sarsai falling under S. No. 210, land measuring 03 Marla 7.5 Sarsai falling under S. No. 211, land measuring 04 Kanals falling under S. No. 340/97,, land measuring 03 Kanals 02 Marla falling under S. No. 338/97, land measuring 01 Kanal 07 Marla 07 Sarsai falling under S. No. 133 and land measuring 03 Kanals 18 Marla falling under S. No. 131 situated at Urpara Nagbal Shopian along with a decree for permanent prohibitory injunction restraining the defendants permanently from causing interference with the suit land through any means whatsoever be passed in favour of plaintiff and against defendants and justice be done.”

4. Defendants/appellants herein moved application under Order VII Rule 11 of the Code of Civil Procedure (CPC), which was vide order dated 18.07.2022, allowed by Trial Court. Against that, appeal was preferred by plaintiffs before Principal District Judge, Shopian (Appellate Court), which vide order dated 01.04.2023, impugned herein, allowed appeal, setting-aside the Trial Court order dated 18.07.2022 and remanded the matter back to Trial Court for trial. It is this order, defendants/appellants are aggrieved of and seek setting-aside thereof.
5. Learned counsel for the appellants submits that the plaint does not disclose any cause of action so far as relief for declaration is sought and it discloses the cause for injunction. Therefore, his submission is that Trial court rightly rejected the plaint and accepted the same. He also states that appellate court has passed judgment impugned in ignorance of law to the extent of not appreciating that trial would be held only when there arises an issue in the suit which can be tried by leading evidence but the nature of respondents’ suit is such in which there is no possibility of framing an issue for the relief of declaration in absence of which the whole suit on mere relief of injunction was liable to be rejected under law which was rightly done by the Trial Court by virtue of judgment dated 18.07.2022 and wrongly set-aside by virtue of

impugned judgement. According to him every relief claimed in a plaint should be supported by separate cause of actions which should be disclosed in express terms in the plaint in compliance of Order VII Rule 1(e) CPC. A mere claim of relief of declaration without substantiating facts constituting cause of action thereof and when it arose would not entitle plaintiff to maintain his suit for trial on such relief which ought to be declined and the same was rightly declined by Trial Court.

6. Perusal of Trial Court judgment dated 18.07.2022 would reveal that on application of defendants 5 to 16, preferred under Order VII Rule 11 CPC, the Trial Court has just observed that *“testing the case in hand on the touchstone of principles enunciated in Order VII Rule 11 CPC what emerges from the pleadings that there is no infraction of any enforceable right or any right which can be enforced by any court of law, as a result the said principles underline Order VII Rule 11 CPC equally applies to the case in hand”*, and dismissed the suit of respondents.
7. Obviously aggrieved of Trial Court judgement dated 18.07.2022, plaintiffs/respondents preferred an appeal, in which they made reference to paras 5 and 6 of the plaint, to contend that defendants were trying to dispossess plaintiffs forcibly in league with revenue agencies from the suit land and that defendants had no right whatsoever in the suit property but started illegal interference in the suit property and were in league with revenue agencies to dispossess plaintiffs from suit property, which would infringe their rights and in case they are not restrained from causing interference in the suit property, it would cause

loss to plaintiffs. By impugned judgement the Appellate Court set-aside the Trial Court judgment.

8. The substantial questions of law proposed by appellants are:

- (a) Whether prerequisite conditions laid down in Section 34 of Specific Relief Act for seeking declaratory relief constitutes cause of action for maintaining a suit and the plaintiff is bound to disclose the said cause of action in his plaint in terms of Order VII Rule 1(e) CPC?
- (b) Whether it is mandatory for plaintiff to disclose separate cause of action for each and every relief claimed by him in the plaint?
- (c) Whether the suit is maintainable for the main relief of declaration even though there is no disclosure of cause of action regarding such relief in the plaint and the court has power to grant such relief in absence of disclosure of such cause?
- (d) Whether the court has inherent power to refuse one of the several reliefs for want of disclosing cause of action for the said relief at the very threshold and remaining relief being mere consequential to relief refused would be tried by the court?
- (e) Whether a suit for non-disclosure of cause of action for the main relief of declaration is hit by the provisions of Order VII Rule 11 CPC and is liable to be rejected as a whole along with consequential relief which directly emerges and flows from the main relief and goes with the same?
- (f) Whether a suit would be tried for any particular relief irrespective of the fact that no issue for the same does arise in the suit and could not possibly be framed by the court?
- (g) Whether a suit in which a private party is seeking declaration of title over private land is maintainable against the State also?

9. The first substantial question of law proposed and raised by appellants is that whether prerequisite conditions laid down in Section 34 of Specific Relief Act for seeking declaratory relief constitutes cause of action for maintaining a suit and the plaintiff is bound to disclose the said cause of action in his plaint in terms of Order VII Rule 1(e) CPC.
10. The general power vested in the courts in India under the Code of Civil Procedure is to entertain all the suits of a civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force. However, courts do not have the general power of making declarations except insofar as such power is expressly conferred by statute. The utility and importance of the remedy of declaratory suits are manifest, for its object is to prevent future litigation by removing existing cause of controversy. It is certainly in the interest of the State that this jurisdiction of court should be maintained, and the causes of apprehended litigation with respect to the immovable property should be removed. However, a declaratory decree confers no new right, it only clears up the mist that has been gathering round the plaintiff's status or title.
11. Chapter VI of the Specific Relief Act 1963 provides for Declaratory Decrees under Section 34 and is the present law which governs declaratory reliefs in India. It reads thus:

“34. Discretion of Court as to declaration of status or right:

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

PROVIDED that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation: A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

12. Section 34 relates to discretion of the court about declaration of status or right. If a person is entitled to any legal character or to any right about any property, he can file a suit against any person who denies or is interested to deny his title to such character or right. The Court can in its discretion make a declaration that the said person is entitled and plaintiff need not in such suit to ask for any further relief. However, the court shall make any such declaration where plaintiff is able to seek further relief than a mere declaration of title, but he omits to do so.

13. There are possibilities of casting a cloud upon the legal character or right of the citizens by the actions of administration of the State. In such cases, Section 34 enables a person to have his rights or legal character declared by a Court of law and thus get rid of the cloud from the legal character or right. It has been held that it was merely to perpetuate and strengthen testimony regarding the title of the plaintiff so that adverse attacks might not weaken it.

14. It is in the interest of the individual and also for the development of economy that there should be smooth transactions with regard to property. However, there is always a possibility of casting a cloud upon the legal character or right to property of the citizens. It is manifestly for the interest of community that conflicting claims to the property should be settled. In such cases the Section 34 of the Specific Relief Act, 1963 enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from his legal character or right. The declaratory relief under Section 34 of the Specific Relief

Act, 1963 is in the nature of equitable relief for granting of an already existing right which has been denied by the other party. It does not seek anything to be paid or performed additionally by the defendant. In simpler terms, this section does not warrant every declaration but that the plaintiff is entitled to such legal character or right and only under special circumstances.

15. The object of declaratory decrees is that where a person's status or legal character has been denied or could have been cast upon the plaintiff and the plaintiff can sue to get the declaration. So that he can get the declaration with regard to the status of legal character or legal right of him. But such declaration is the discretionary power of the Court, which would be sound, judicious and based on the judicial principles. The objects of the declaratory decrees are:

- a) To protect the legal right and legal character of the owner from the adverse attack;
- b) To enjoy the legal character and legal right peacefully by owner;
- c) To protect the law and peace where the adverse possession is noticed.

16. To maintain a suit under section 34 of Specific Relief Act, the following conditions are to be fulfilled:-

- a) The plaintiff must be a person entitled to any legal character to any right as to any property
- b) The defendant must be a person denying or interested to deny the plaintiff's title to such legal character or right
- c) The declaration issued for must be a declaration that the plaintiff is entitled to a legal character or to any right to the property; and
- d) Where the plaintiff is able to seek further relief than a mere declaration, he must seek such relief.

17. To obtain the relief of declaration, the plaintiff is to establish that: (1) the plaintiff is at the time of the suit entitled to any legal character or any right to any property, (2) the defendant has denied or is interested in denying the character or title of the plaintiff, (3) the declaration asked

for is a declaration that the plaintiff is entitled to a legal character or to a right to property, (4) the plaintiff is not in a position to claim a further relief from a bare declaration of his title. Even if all these conditions are fulfilled, the Court has still to grant or not to grant a declaratory relief depending on the circumstances of each case. A man's status or legal status or 'legal character' is constituted by attributes, which the law attaches to him in his individual or personal capacity, the distinctive mark or dress as it were, with which the law clothes him. Legal character means a position recognized by law. According to Holland the chief variety of status among natural persons may be referred to the following causes: sex, minority, mental defect, rank, caste, official position, civil death, illegitimacy, profession, etc. Any person who has been denied of the legal character and not necessarily the legal right may sue against the person denying. A legal character constitutes of the attributes that the law attaches to him in his personal capacity such as marriage, adoption, divorce, legitimacy etc. Thus, the character or status should have been conferred by law on persons i.e. created by birth and not by contract. The second requirement is that the person who seeks the remedy must have a right to any property. A right in Holland's proposition is a man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society. The Bombay High Court has observed that every interest of right which is recognized and protected by the State is a legal right. The Courts have made a distinction between "right to property" and "a right in property" and it has been held that in order to claim a declaration the Plaintiff need not show a right in property.

18. A dispute between the parties may relate either to a person's legal character or rights or interest in the property. A cloud upon the title is something which is apparently valid, but which is in fact invalid. It is the semblance of the title, either legal or equitable, or a claim of an interest in property, appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce. There may be real dispute about the plaintiff's legal character or right to property, and the parties to be arrayed, yet the Court will refuse to make any declaration in favour of the plaintiff, where able to seek further relief than a mere declaration, he omits to do so. The object of the proviso is to avoid multiplicity of suits. What the legislature aims at is that, if the plaintiff at the date of the suit is entitled to claim, as against the defendant to the cause some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice; he is bound to have the matter settled once and for all in one suit. Even though if the essential elements are established, yet it is a discretion of the Court to grant the relief. The relief of declaration cannot be claimed as a matter of right. In cases where the necessary parties are not joined the Court can reject the suit for declaration. Under Section 34 of the Act, the discretion which the Court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. The Court has to consider the nature of obligation in respect of which performance is sought. No hard and fast rule can be laid down for determining whether this discretionary relief should be granted or refused. The exercise of the discretion depends upon the chances of

each case. A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.

19. In a suit for declaration of rights or character and injunction the Plaintiff will have to substantiate/prove his rights as claimed thereof. Accordingly, the Court may in its discretion award the rights so prayed along with permanent injunction, if deemed fit and necessary in the facts of the case. The utility and importance of the remedy of declaratory suits are manifest, for its object is 'to prevent future litigation by removing existing cause of controversy. In the aforesaid backdrop of detailed discussion of Section 34 of the Act, it may be stated that one can claim the declaratory relief only if one can show that one's 'legal character' or 'right to any property' is affected. If the plaintiff fails to fit his case within the ambit of the section, his suit necessarily fails. So, a declaratory decree is one which resolves the legal uncertainty of the rights and status of the parties. However, passing of a declaratory decree is a matter of discretion of Court and it cannot be claimed as a right. In declaratory suits, plaintiff's task is not over once he proves that he is entitled to the legal character or right to property, it is for him to convince the Court that the defendant has denied or interested to deny that legal character or right of the plaintiff. Then only he can succeed in obtaining the declaration sought. The provision is a verbatim reproduction of Section 42 of the Specific Relief Act, 1877. It ensures a remedy to the aggrieved person not only against all persons who actually claim an adverse interest to his own, but also against those who may do so. The provision for the effect of declaration

has been provided under section 35 of Specific Relief Act, which reads as under:

“A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees”.

20. So, declaratory decree is “*in personam*” and not “*in rem*”. Thus, a declaratory decree binds (a) the parties to the suit; (b) persons claiming through the parties; (c) where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. It is only the parties to the suit and the representatives in interest, but not the strangers who are bound by the decree. By virtue of this Section, a judgment is binding only if it is *inter parties*, which is not *in rem*, and does not operate as *res judicata*, may be admissible under Section 13 of the Evidence Act. It is a settled law that in a suit for declaration of title, the burden is heavily lies on the plaintiff, the plaintiff is not supposed to depend upon the weakness in the case set up by defendant.

21. In a suit for declaration, heavy burden rests upon the plaintiff to prove the title, particularly when it is in respect of an item of immovable property. There are certain known sources of acquisition of title, such as by way of succession, purchase, assignment from the Government, or even by perfecting the title by adverse possession. To prove the title, what becomes essential is to identify the erstwhile owner of the property and then to explain the manner in which it has accrued to the plaintiff. Even if there exists certain missing links in the chain of events

that connect the original owner and plaintiff, the title can be said to have been established, in the absence of any stronger claim by the defendant.

22. In ***Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426***, this

Court held as under:

“the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.”

“The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.”

23. Whether the suit for declaration is maintainable without seeking any consequential relief, it was held by Supreme Court in ***Venkata Raja and Others Vs. Vidyane Doureradja Perumal, (2014) 14 SCC 502***. In ***Deo Kuer & Anr. v. Sheo Prasad Singh & Ors., 1966 AIR(SC) 359***, the Supreme Court dealt with a similar issue, and considered the provisions of Section 42 of the Specific Relief Act 1877, (analogous to Section 34 of the Act 1963), and held, that where the defendant was not in physical possession, and not in a position to deliver possession to the plaintiff, it was not necessary for the plaintiff in a suit for declaration of title to property, to claim the possession. While laying down such a proposition, the Supreme Court placed reliance upon the judgments of Privy Council in ***Sunder Singh Mullah Singh Sanatan Dharam High School Trust v. Managing Committee, Sunder Singh Mullah Singh Rajput High School, 1938 AIR (PC) 73***; and ***Humayun Begam v. Shah Mohammad Khan, 1943 AIR (PC) 94***. In ***Vinay Krishna v.***

Keshav Chandra & Anr., 1993 AIR(SC) 957, this Court while dealing with a similar issue held:

“It is also now evident that she was not in exclusive possession because admittedly Keshav Chandra and Jagdish Chandra were in possession. There were also other tenants in occupation. In such an event the relief of possession ought to have been asked for. The failure to do so undoubtedly bars the discretion of the Court in granting the decree for declaration.”

24. The very purpose of the proviso to Section 34 of the Specific Relief Act 1963 is to avoid the multiplicity of the proceedings. Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right. The power of the Court to grant declaratory decrees is not limited to this section and they can/will be made by the Courts under the general provisions of the Civil Procedure Code as Section 9 or Order 7 Rule 7 C.P.C.

25. The second substantial question of law raised and proposed by the appellants is that whether it is mandatory for plaintiff to disclose separate cause of action for each and every relief claimed by him in the plaint. Answer thereto is in negative. The reason being that it is not mandatory for plaintiff to disclose a separate cause of action for each relief claimed in the plaint. The cause of action is the set of facts which entitle the plaintiff to seek the legal relief. Order VII Rule 11 CPC is reproduced as under:

“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:

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 from 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.”

26. In terms of Order VII Rule 11 (a) CPC, a plaint is liable to be rejected if it does not disclose cause of action. The "cause of action" refers to the bundle of facts which entitle the plaintiff to seek relief from the court. Section 20 CPC says about the suits to be instituted where defendants reside or cause of action arises. It provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant resides or the cause of action wholly or in part arises. Order II Rule 2 CPC provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Order II Rule 3 says that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. Explanation to Order II Rule 3 CPC says that for the purposes of Rule 3, an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action. Order VII Rule 1 (e) CPC provides that the plaint, inter alia, shall contain the facts constituting the cause of action and when it arose.

27. The Supreme Court in ***A. K. Gupta and sons vs. Damodar Valley Corporation, 1967 AIR SC 96***, has said that the expression “cause of action” does not mean “every fact which it is material to be proved to entitle the plaintiff to succeed”, *for* it were so, no material fact could ever be amended or added and of course no one would want to change or add an immaterial allegation by amendment. In ***Bloom Dekor Ltd vs. Subhash Himatlal Desai and others, (1994) 6 SCC 322***, it was held by the Supreme Court that by “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgement of the court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.
28. In a generic and wide sense (as is in Section 20 CPC) “cause of action” means every fact which it is necessary to establish to support a right or to obtain a judgment. [Vide: ***Sadanandan Bhadran vs. Madhavan Sunil Kumar (1998) 6 SCC 514***].
29. It is settled law that “cause of action” consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See: ***South East Asia Shipping Co. Ltd vs. Nav Bharat Enterprises Pvt Ltd and others (1996) 3 SCC 443***].
30. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the

circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". Reference is made to ***Rajasthan High Court Advocates' Association v. Union of India and Ors. (2001 (2) SCC 294.***

31.The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. [See: ***Gurdit Singh vs. Munsha Singh (1977 (1) SCC 791***].

32.The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. The fact or facts which give a person a right to judicial relief. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts

which would entitle party to sustain action and give him right to seek a judicial remedy. Fact, or a state of facts, to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of right-duty between two or more persons. Failure to perform legal obligation to do, or refrain from performance of, some act. Matter for which action may be maintained. Unlawful violation or invasion of right. The right which a party has to institute a judicial proceeding. (See: Black's Law Dictionary).

33. In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edition) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference. (See: **Navinchandra N. Majithia v. State of Maharashtra and Ors. (2000 (7) SCC 640)**).

34. In Halsbury Laws of England (Fourth Edition) cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.

35. As observed by the Privy Council in ***Payana v. Pana Lana (1914) 41 IA 142***, the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion is, when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit whether the same evidence will maintain both actions. [See: ***Mohammad Khalil Khan v. Mahbub Ali Mian, AIR 1949 PC 78***]. It would be appropriate to quote para 61 of the said judgment, which reads as follows: -

“61. xxx xxx xxx

(1) The correct test in cases falling under Order 11 Rule 2, is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit (*Moonshee Buzloor Fuheer v. Shumroonnissa Begum*, (1967) 11 Moo I 551 (P.C.).

(2) The 'cause of action' means every fact which will be necessary for the plaintiff to prove it traversed to order to support his right to the judgment (*Real v. Brown* (1889) 22 Q.B.O. 138).

(3) If the evidence to support the two claims is different. (*Brunsoon v. Nurnphroy* (1984 14 Q.B.O. 141),

(4) The causes of action in the two suits may be considered to be away if in substance they are identical (*Brunsoon v. Numphroy*, supra).

(5) The cause of action has no relation whether to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff seeks the Court to arrive at a conclusion in his favour. (*Mst. Chand Kour v. Pratap Singh* (1887) 15 I. A. 185(PC). This observation was made by Lord Watson in a case under section 43 of the Act of 1882 (corresponding to Order II, Rule 2) where plaintiff made various claims in the same.”

36. In ***M/s Kusum Ingots & Alloys Ltd vs. Union of India and anr. 2004***

(6) SCC 254, the Supreme Court said that cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to

mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

37. All the proposed substantial questions of law are set at rest in view of the law laid down by the Supreme Court in ***Vinod Infra Developers Ltd. v. Mahaveer Lunia and others***, 2025 INSC 772, dated 03.05.2025, also reported in ***2025 LiveLaw (SC) 639***, by holding that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. The Supreme Court has ruled that a plaint cannot be dismissed in its entirety under Order VII Rule 11 CPC just because one of the reliefs claimed is legally unsustainable. If the plaint also contains another maintainable relief that arises from a distinct cause of action, it must be considered. Setting aside the High Court's ruling, the Supreme Court held:

“The High Court's wholesale rejection of the plaint, without appreciating that the reliefs claimed flowed from multiple and distinct causes of action – particularly one arising after the revocation of the power of attorney – amounts to an improper application of Order VII Rule 11 CPC. Selective severance of

reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts.”

38. The Supreme Court has, thus, clarified that a plaint can only be rejected under Order VII Rule 11 CPC if, on its face, it does not disclose any cause of action, is barred by law, or suffers from issues like under-valuation or insufficient court fees. The examination must be limited strictly to the pleadings in the plaint, without considering the defendant’s case. If the plaint reveals even one triable issue, it cannot be summarily dismissed. Supporting this position, the Supreme Court referred to its earlier decision in ***Central Bank of India v. Prabha Jain***, SC 96, which held:

“If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B.”

39. Finally, the Supreme Court concluded:

“The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.”

40. The third substantial question of law proposed by appellants is that whether the suit is maintainable for the main relief of declaration even though there is no disclosure of cause of action regarding such relief in the plaint and the court has power to grant such relief in absence of disclosure of such cause. A suit seeking declaration is normally maintainable even without a detailed disclosure of the cause of action

in the plaint does not fall under the grounds for rejection specified in Order VII Rule 11 CPC. It is true that as per the sub-rule (a) of Rule 11 Order 7, a plaint could be rejected when it does not disclose the cause of action. “Cause of action” being the foundation of the claim refers to the entire set or bundle of facts necessary and material to prove in order to get a judgment. It refers to a definite point of time when the requisite ingredients constituting that “cause of action: are complete. The “cause of action” is complete when they provide the aggrieved party with the right to invoke jurisdiction of the court/forum. The test is to determine when the aggrieved person could have first maintained action for a successful result. While dealing with an application under Order VII Rule 11 CPC, seeking rejection of a plaint, court is to determine whether plaint discloses a cause of action by scrutinizing the averments in the plaint. While making such a determination, court would have to disregard the pleas taken by defendant in written statement and application for rejection of plaint on merit. The Supreme Court in ***Dahiben vs. Arvinbhai Kalyanji Bhanusali, (2020) 7 SCC 366,*** clarified that while determining any application filed under Order VII Rule 11 CPC, the court should restrict itself to the plaint and should not go into the detailed facts as provided under the written statement or even application filed under Order VII Rule 11 CPC.

41. The Supreme Court has emphasized that judicial time is precious, and the courts are duty bound to reject vexatious plaints to avoid wastage of judicial time. It has clarified that the power of the courts under Order VII Rule 11 CPC is mandatory in nature and can be exercised at any stage of the suit, either before registering the plaint, or after issuing

summons to the defendant, or before conclusion of the trial. However, the Supreme Court has also clarified that the power conferred under Order VII Rule 11 CPC is a drastic one and the requirements enumerated therein should be strictly adhered to.

42. Litigants may pursue the option of seeking rejection of a plaint at the threshold, if the suit fails to disclose a valid cause of action; or is barred by any law; or if the reliefs prayed for therein are defective and unremediable, in line with the provisions of Order VII Rule 11 CPC. However, litigants ought to be mindful that in exercising such a power, the court cannot go into the merits of the case and has to make its determination only from a scrutiny of the averments made out in the plaint, which is presumed to be true. Additionally, the courts are also required to exercise this power with restraint. Plaints providing a prima facie cause of action are not to be simply rejected at the threshold. The decision of using the option provided under Order VII Rule 11 CPC should therefore be taken with due consideration of the facts and circumstances.

43. The fourth substantial question proposed by appellants is that whether the court has inherent power to refuse one of the several reliefs for want of disclosing cause of action for the said relief at the very threshold and remaining relief being mere consequential to relief refused would be tried by the court. This substantial question has already been dealt with while deciding abovementioned three substantial questions of law proposed by appellants. It may, however, be added here courts do not possess unlimited inherent powers to refuse specific reliefs at the threshold unless such power is expressly provided by statute. The

exercise of inherent powers cannot override express provisions of law. In civil procedure, the power to reject a plaint or refuse relief for want of cause of action to reject a plaint or refuse relief for want of cause of action is governed specifically by Order VII rule 11 CPC. It may be reiterated here that the Supreme Court in ***Vinod Infra Developers Ltd.*** (supra) has held that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. The Supreme Court has ruled that a plaint cannot be dismissed in its entirety under Order VII Rule 11 CPC just because one of the reliefs claimed is legally unsustainable. If the plaint also contains another maintainable relief that arises from a distinct cause of action, it must be considered. Setting aside the High Court's ruling, the Supreme Court that the High Court's wholesale rejection of the plaint, without appreciating that the reliefs claimed flowed from multiple and distinct causes of action amounts to an improper application of Order VII Rule 11 CPC. Selective severance of reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts. The Supreme Court has, thus, clarified that a plaint can only be rejected under Order VII Rule 11 CPC if, on its face, it does not disclose any cause of action, is barred by law, or suffers from issues like under-valuation or insufficient court fees. The examination must

be limited strictly to the pleadings in the plaint, without considering the defendant's case. If the plaint reveals even one triable issue, it cannot be summarily dismissed.

44. The fifth substantial question of law proposed by the appellants is that whether a suit for non-disclosure of cause of action for the main relief of declaration is hit by the provisions of Order VII Rule 11 CPC and is liable to be rejected as a whole along with consequential relief which directly emerges and flows from the main relief and goes with the same. Answer to this proposed question is in negative. As already enunciated herein before the Supreme Court has set at rest **Vinod Infra Developers Ltd.** (supra). It may be added here that under Order VII Rule 11(a) of the Code of Civil Procedure (CPC), a plaint can be rejected if it does not disclose a cause of action. The distinction is crucial: *non-disclosure* refers to the failure of the plaint, on its face, to set out facts that constitute a cause of action, whereas *non-existence* pertains to the factual or legal merit of the cause of action, which is not a ground for rejection at the threshold. The court, when considering an application under Order VII Rule 11, is restricted to examining the averments in the plaint and the documents annexed to. It cannot go into the merits of the case or consider the defence at this stage. As has been held by the Supreme Court in **Dahiben** (supra) that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to.

45. The sixth issue raised by appellants is that whether a suit would be tried for any particular relief irrespective of the fact that no issue for the same

does arise in the suit and could not possibly be framed by the court. Again, this question/issue would not come to rescue of appellants. The reason being that plaintiffs/respondents have given cause of action in their plaint. It is pertinent to mention here that plaintiffs/respondents field a civil suit titled as Ab Razak She and others vs. UT of J&K and others before the Trial Court praying that a decree for declaration, declaring plaintiffs as legal owners of land measuring 11 Kanals 12 Marlas 06 Sersai falling under Survey no.4, land measuring 03 Marla falling under Survey no.197, land measuring 01 Kanal 13 Marlas 07 Sersai falling under Survey no.210, land measuring 03 Marlas 7.5 Sersai falling under Survey no.211, land measuring 04 Kanals falling under Survey no.340/97, land measuring 03 Kanals 03 Marlas falling under Survey no.338/97, land measuring 01 Kanal 07 Marlas 07 Sersai falling under Survey no.133 and land measuring 03 Kanals 18 Marlas falling under Survey no.131, situated at Urpara Nagbal, Shopian, along with a decree for permanent prohibitory injunction restraining defendants permanently from causing interference with the suti ladn through any means whatsoever, may be passed. The case set up by plaintiffs/respondents in their plaint is that their great grandfather, namely, Khazir Seh, was having landed property, which after his death was distributed among his legal heirs and his three sons, namely, Mohd, Ama and Aziz inherited the said property in equal shares and three sons of Khazir She partitioned the said land by way of family arrangement prevalent in the family and after their death the property was inherited by their issues. The partition took place hundred years ago and after proper partition ancestors of parties to the suit took the possession of

their respective shares and thereafter father of defendants, namely, Gani Seh, gifted land measuring 01 Kanal 10 Marlas falling under Survey no.04 in favour of plaintiff no.3,4,&5. Besides, plaintiffs purchased land measuring 04 Kanals falling under Survey no.340/97 and land measuring 06 Kanals under Survey no.341/54 from great grandfather of plaintiffs and defendant nos. 5 to 11 in favour of father of plaintiffs by way of a registered sale deed. Thereafter plaintiffs exchanged the land measuring 06 kanals under Survey no.341/154 with land measuring 05 Kanals 01 Marla with Ama Seh and since then is in exclusive possession of plaintiffs as its lawful owners. The property of Aziz measuring 05 Kanals 01 Marla falling under Survey no.4 was devolved upon Wahab Seh (father of plaintiff) and Gani Seh (father of defendants 5 to 160 in equal shares, i.e., 02 Kanals 11 Marlas each. According to plaintiffs, they are absolute owners in possession of suit land. It is also stated by plaintiffs, that defendants approached revenue agencies for partition and demarcation of suit land which they cannot as the suit property has already been partitioned between parties which is evident from gift deed and sale deed executed by father and great grandfather of parties in favour of plaintiffs 3 to 5 and their father, and now defendants are trying to dispossess plaintiffs forcibly in league with revenue agencies from the suit land which they cannot as per provisions of the Land Revenue Act. As is contended by plaintiffs, defendants have no right in suit property. Enclosed with the plaint

46. When official defendants 1 to 4 caused their appearance before the Trial Court, they filed written statement stating therein that plaintiffs are not absolute owners of suit property and that no partition had been recorded

in revenue records and as far as transfer of land by Gani Seh is concerned, the same has not been found in revenue records. The defendants/ appellants did not make any reply with respect to development of orchard for want of knowledge. It is also stated by defendants in their written statement that defendants approached Deputy Commissioner, Shopian, with an application for demarcation and measurement of landed estate and the partition of the suit land among other land, who pass an order, vide which a committee was constituted to demarcate the whole landed estate of parties. The said committee after visiting the spot carried out a fresh demarcation with ETS machines and the report reveals that plaintiffs are in excess share than the defendants.

47. Insofar as private defendants 5 to 15 are concerned, they, in their written statement have admitted the para 02 of the plaint to the extent of Khazir Seh being former owner of suit land and have denied rest of the para. According to defendants, after death of Khazir Seh, his whole landed estate devolved upon his three sons, namely, Mohammad, Ama and Aziz. Defendants have also stated that after death of grandfather, Mohammad, the property was jointly inherited and possessed by father of plaintiffs (Wahab) and father of defendants (Gani) and no partition as alleged in para 02 took place but plaintiffs are in possession of excess share than they are entitled to, which belongs to defendants and proceedings for partition by metes and bounds are going on before official defendants. Neither any formal partition took place between parties nor any share has been sold out by defendants or their father in favour of plaintiffs.

48. Defendants/appellants moved an application under Order VII Rule 11 CPC for rejection of plaint. Objections to the application were filed by plaintiffs / respondents. The Trial Court after reproduction of rival contentions of parties and submissions made by counsel for parties, stated that it is in agreement with the submissions of counsel for defendants that for every relief claimed there must be a separate cause of action pleaded and disclosed in the plaint in unequivocal terms. After saying this, the Trial Court rejected the plaint.

49. Plaintiff/respondents filed appeal against Trial Court order dated 18.07.2022, *inter alia*, on the grounds that in para 05 of plaint, the plaintiffs have clearly mentioned that defendants are trying to dispossess plaintiffs forcibly in league with revenue agencies from the suit land which they cannot as per the provisions of Land Revenue Act and in para 06 it has been stated by plaintiffs that defendants have no right whatsoever in the suit property but they have started illegal and unwarranted interference in the suit property and in league with revenue agencies are trying to dispossess the plaintiffs from the suit property, which will definitely infringe the rights of plaintiffs and in case defendants are not restrained from causing interference in suit property, it will result in loss and injury to plaintiffs; that there is no difficulty in appreciating the position of law that an application under Order VII rule 11 CPC would govern a case of non-disclosure of a cause of action; however it does not govern a defective cause of action; that in ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated question of law or fact; that test for exercising the power under Order

VII Rule 11 CPC is that if averments made in plaint are taken in entirety in conjunction with documents relied upon, the same would result in passing of a decree at the conclusion of trial by the Trial Court. Contrary to it, it had been contention of defendants/appellants that plaintiffs have failed to raise the averment showing cause of action accrued to plaintiffs in the suit nor averments of plaints disclose cause of action by any means. After giving the account of rival contentions of parties, the Appellate Court made reference to Order VII rule 11 CPC. The Appellate court has found that Trial Court has itself mentioned in its order that plaintiffs are seeking declaration for declaring them to be owners of suit land and injunction to restrain defendants from causing any sort of interference with the possession of plaintiffs over suit land and it appears from careful perusal of plaint that parties are in dispute with regard to the land devolved upon them through their grandfather, namely, Mohammad Seh, in which father of plaintiffs (Wahab) and father of defendants 5 to 16 (Gani) were entitled to equal shares, this being so, the parties stood co-sharers with each other which is also evident from revenue extracts placed with the plaint. The Appellate Court has also referred to paras 05 and 06 of the plaint. The Appellate Court has rightly observed that Trial Court without appreciating the facts of the case passed the order rejecting the plaint and that Trial Court has overlooked the mandate of Order VII Rule 11 CPC which required that in any suit in which triable issues can be framed, the rigour of Order VII Rule 11 CPC cannot be applied. All that has been said by the Appellate Court does not call for any interference more particularly in view of the law laid down by the Supreme Court in the case of **Vinod**

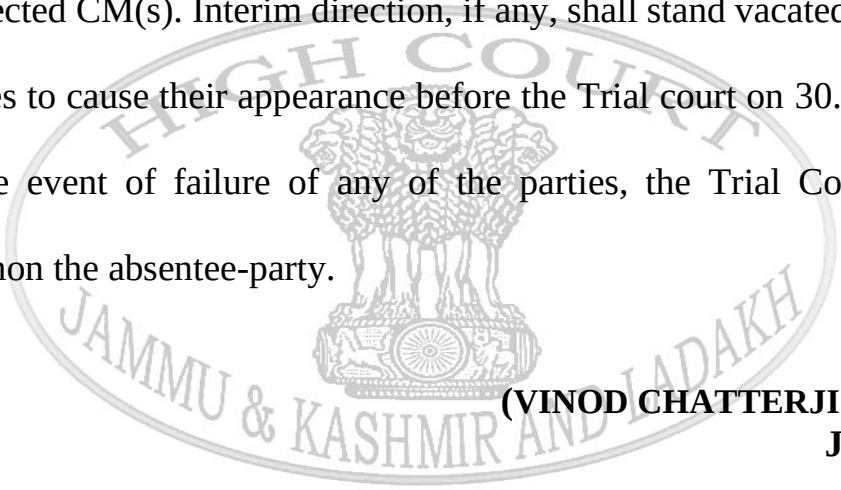
Infra Developers Ltd. (supra), in which it has been held and concluded that the position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

50. The seventh and last question raised by appellants is that whether a suit in which a private party is seeking declaration of title over private land is maintainable against the State also. Answer thereto is yes. A suit in which a private party seeks declaration of title over the private land is normally maintainable against the State. Section 9 CPC says that civil courts have jurisdiction to try all suits of a civil nature unless their cognizance is expressly or impliedly barred by any enactment inasmuch as disputes over land title are inherently of a civil nature. Section 34 of Specific Relief Act, 1963, allows a person entitled to any legal character or to any right as to any property to institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make a declaration. The “State” can certainly be a “person denying, or interested to deny” a private party’s title to property inasmuch as the State being a juristic person, is included within the scope of “any person” for the purposes of such suits. When the title is under a cloud or disputed by the State, the proper remedy is a suit for declaration of title, and if plaintiff is not in

possession, also for possession and injunction. In the present case, the Appellate Court has rightly said that Trial Court has without appreciating the facts and circumstances of the case as pleaded in the plaint and documents appended therewith, passed the order rejecting the plaint, which required the Appellate Court to intervene and set-aside the Trial Court order dated 18.07.2022.

51.For the reasons discussed above, the instant appeal is **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

52.Parties to cause their appearance before the Trial court on 30.06.2025. In the event of failure of any of the parties, the Trial Court shall summon the absentee-party.



(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
28.05.2025
“Imtiyaz”

Whether approved for reporting? Yes/No