

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.874 OF 2009
IN
SUIT NO.1396 OF 2008**

Hajra Zakaria Aghadi & Ors.Plaintiffs

V/s.

Virendra Kumar Jhamb & Ors.Defendants

Mr. S.I. Memon for the plaintiffs.

Ms. Meenakshi Adate i/b. Jacinta D'silva for the defendant no.3.

Mr. Parikshit Barpujari i/b. Mulla & Mulla & CBC for the defendant nos. 11,12 and 13.

**CORAM : K.R.SHRIRAM,J
DATE : 19th October, 2015**

P.C.:-

1 This notice of motion is for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. Order VII Rule 11 reads 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 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;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails 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 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.

2 It is the case of the applicants that the plaintiffs' claim that the conveyances have been executed by defendant no.1 and defendant no.2 as the Constituted Attorneys of the original owners on the strength of forged Powers of Attorney. Paragraph 2 of the affidavit in support is basically narration of what the applicants understand are the contents of the plaint and documents annexed thereto. Paragraphs 3, 4 and 5 of the affidavit in support are as under :-

3. The present suit has been filed as the plaintiffs' claim that the conveyances have been executed by defendant nos.1 and 2 as the Constituted Attorneys of the original owners on the strength of forged Powers of Attorney and the execution of the conveyances is in violation of the rights of Zakaria Aghadi under his Agreement dated 5th March, 1980 with defendant no.1. The plaint fails to disclose as to how the present plaintiffs are entitled to file the present suit and claim the reliefs which have been claimed in the suit. The Agreement dated 13th January, 1981

between Zakaria Agahdi and defendant no.6 which is annexed to the plaint shows that Zakaria Aghadi had granted development rights to defendant no.6 and under the Agreement, Zakaria Aghadi was obliged to cause the original owners and defendant no.1 to execute conveyances in favour of the society/ies which were to be formed. It is the plaintiffs' case that defendant no.6 thereafter constructed a building and the purchasers of the tenements/units in the building formed a Co-operative Housing Society known as Sabri Co-operative Housing Society Ltd., which is impleaded as defendant no.4 to the suit. The conveyances in favour of defendant no.4 were executed by defendant nos.1 and 2 on 6th October, 2006. The plaint fails to disclose how execution of these conveyances in favour of defendant no.4 gave rise to a cause of action in favour of the plaintiffs to file the present suit.

4. As a matter of fact, the contents of the Agreement between Zakaria Aghadi and defendant no.6 indicate that Zakaria Aghadi assigned all his rights vested in him by virtue of his Agreement with defendant no.1 to defendant no.6. In consideration thereof Zakaria Aghadi was to receive a sum of Rs.4,00,000/- under the said agreement. Although, it has been alleged in the present suit that a sum of Rs.2,00,000/- was not paid by defendant no.6, no relief has been sought for recovery of the said amount which in any event would be hopelessly barred by limitation. Moreover, neither does non payment by defendant no.6 furnish a cause of action for the present suit, nor is such a cause of action disclosed in the plaint.

5. Moreover, the plaintiff has not disclosed in the plaint as to how they are entitled to the rights of Zakaria Aghadi under the Agreement which is annexed to the plaint. As a matter of fact, the contents of paragraphs 7(e),(f),(g) and (j) indicate that Zakaria Aghadi had entered into the Agreement, a copy whereof is annexed to the plaint, in his capacity as a partner of a firm known as M/s. Bombay Builders. It is therefore, in effect the plaintiffs' case that Zakaria Aghadi treated all rights under the Agreement as rights

belonging to the partnership firm known as M/s. Bombay Builders. There is nothing stated in the plaint, which would even remotely indicate as to how the plaintiffs are entitled to rights which allegedly belonged to M/s. Bombay Builders and/or as to how the said rights have devolved upon them.”

3 It is not the case of the applicants that the plaint does not disclose any cause of action. Infact there is no avernment to that effect. Moreover, it is not the case of the applicants that the statements in the plaint appeared to be barred by any law. It is not the case of the applicants that the plaint is required to be rejected for grounds mentioned in Rule 11 (b), (c), (e) or (f).

4 Therefore, there is no merit in the notice of motion and the same is hereby dismissed.

5 The counsel for the plaintiffs is pressing for cost. He is justified. The applicants to pay a sum of Rs.10,000/- as cost to the plaintiffs. The amount has to be paid by way of cheque drawn in favour of the advocate on record for the plaintiffs within two weeks from today.

6 The counsel for the plaintiffs states that all the defendants have been served. From the noting in the records and proceedings it appears that the defendant nos. 1 to 5, 7 to 13 and 16 have filed their

written statement and the suit as against defendant no.6 is already transferred to the list of undefended suits. The counsel for the plaintiffs further states that they have filed affidavit of service of the Sheriff's Bailif upon all the other defendants. Therefore, the suit as against defendant nos.14, 15 is transferred to the list of undefended suits.

7 Stand over to 19th November, 2015 for framing of issues. In the meanwhile parties to file their respective affidavit of documents and also complete discovery and inspection.

(K.R.SHRIRAM,J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**