

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.39 of 2016

1. Shyam Lal Kurmi, S/o Ramadheen Kurmi, aged about 78 years, R/o Village Tekari, Tahsil & District Raipur (C.G.)
2. Abdul Khaleel Hamidi, S/o Late Abdul Hamidi, aged about 56 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)
3. Rehan Hamidi, S/o Abdul Khaleel Hamidi, aged about 31 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)

.....(Defendants No.1-3)

---- Applicants

Versus

1. U.L.M. Educational Society, Through: Chairman Shri Anil Kumar Mangal, S/o Late Shri Udhalal Mangal, R/o Sai Plytech Aviation, Plot No.7, Road No.1 Silver Oak Marg, Dhitorini, New Delhi

.....(Plaintiff)

2. State of Chhattisgarh, through the Collector, Collectorate Premises, Raipur, Tahsil and District Raipur (C.G.)

.....(Defendant No.4)

---- Non-applicants

Civil Revision No.40 of 2016

1. Shiv Kumar, S/o Shri Ramlal, aged about 63 years, R/o Mowa, Raipur, Tahsil & District Raipur (C.G.)
2. Abdul Khaleel Hamidi, S/o Late Abdul Hamidi, aged about 56 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)
3. Rehan Hamidi, S/o Abdul Khaleel Hamidi, aged about 31 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)

.....(Defendants No.1-3)

---- Applicants

Versus

1. U.L.M. Educational Society, Through: Chairman Shri Anil Kumar Mangal, S/o Late Shri Udhalal Mangal, R/o Sai Plytech Aviation, Plot No.7, Road No.1 Silver Oak Marg, Dhitorini, New Delhi
.....(Plaintiff)

2. State of Chhattisgarh, through the Collector, Collectorate Premises, Raipur, Tahsil and District Raipur (C.G.)
.....(Defendant No.4)

---- Non-applicants

Civil Revision No.41 of 2016

1. Bishambhar Satnami, S/o Shri Dhaniram Satnami, aged about 64 years, R/o Village Tekari, Raipur, Tahsil & District Raipur (C.G.)
2. Lekhram, S/o Shri Samaru, aged about 57 years, R/o Village Tekari, Raipur, Tahsil and District Raipur (C.G.)
3. Kumari Bai W/o Shri Pratap Verma, aged about 58 years, R/o Giraudh, Raipur, Tahsil and District Raipur (C.G.)
4. Ramnarayan, S/o Shri Samaru Verma, aged about 65 years, R/o Village Tekari, Raipur, Tahsil and District Raipur (C.G.)
5. A.K. Hamidi, S/o Late A. Hamidi, aged about 56 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)
.....(Defendants No.1-5)

---- Applicants

Versus

1. U.L.M. Educational Society, Through: Chairman Shri Anil Kumar Mangal, S/o Late Shri Udhalal Mangal, R/o Sai Plytech Aviation, Plot No.7, Road No.1 Silver Oak Marg, Dhitorini, New Delhi
.....(Plaintiff)
2. State of Chhattisgarh, through the Collector, Collectorate Premises, Raipur, Tahsil and District Raipur (C.G.)
.....(Defendant No.6)

---- Non-applicants

AND

Civil Revision No.42 of 2016

1. Bishambhar Satnami, S/o Shri Dhaniram Satnami, aged about 64 years, R/o Village Tekari, Raipur, Tahsil & District Raipur (C.G.)
2. Abdul Khaleel Hamidi, S/o Late Abdul Hamidi, aged about 56 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)
3. Rehan Hamidi, S/o Abdul Khaleel Hamidi, aged about 31 years, R/o L.I.C. Colony, Mowa, Raipur, District Raipur (C.G.)

.....(Defendants No.1-3)

---- Applicants

Versus

1. U.L.M. Educational Society, Through: Chairman Shri Anil Kumar Mangal, S/o Late Shri Udhalal Mangal, R/o Sai Plytech Aviation, Plot No.7, Road No.1 Silver Oak Marg, Dhitorini, New Delhi
2. State of Chhattisgarh, through the Collector, Collectorate Premises, Raipur, Tahsil and District Raipur (C.G.)

.....(Plaintiff)

.....(Defendant No.4)

---- Non-applicants

For Applicants:	Mr. Adil Minhaj, Advocate.
For Non-applicant No.1:	None present.
For State/Non-applicant No.2:	Mr. S.C. Khakharia, Deputy AG.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

17/06/2016

1. The plaintiff / non-applicant No.1 filed a civil suit for declaration of its title and permanent injunction against the applicants / defendants stating inter alia that it has purchased the suit land

from defendant No.1 by registered sale deed and thereafter placed in possession but thereafter, defendant No.1 without authority of law transferred the suit land to applicant No.3 herein / defendant No.3, which came to the notice of the plaintiff on 20-11-2008 that its name has not been recorded in the revenue records. The plaintiff filed necessary application for obtaining copy of revenue records and thereafter, filed the suit on 1-9-2009 as cause of action has accrued in its favour and prayed for declaration of title and permanent injunction in interfering with the possession by the defendants.

2. On being noticed, the defendants / applicants filed their joint written statement before the trial Court on 7-5-2010 denying the plaint allegations and stating inter alia that in the name of U.L.M. Educational Society no institution has been registered under the provisions of the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 at Raipur, Chhattisgarh and in absence of registration, no land can be purchased by the Society, and defendant No.1 Shyam Lal Kurmi has only mortgaged the suit land to the plaintiff Society on 28-6-2004. It was further pleaded that the plaintiff is engaged in illegal trade and business of land and as such, the suit deserves to be dismissed.
3. Issues were framed on 1-9-2009 and thereafter, on 12-11-2014, with a delay of 5 years, the defendants have filed an

application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 before the trial Court stating inter alia that the plaintiff Society was registered at New Delhi under the Societies Registration Act, 1860 which is a local Act in the Union Territory of New Delhi; there is no registration of the plaintiff Society under the Chhattisgarh Co-operative Societies Act, 1960; the plaintiffs are not in possession over suit land and therefore the suit is barred by the proviso to Section 34 of the Special Relief Act, 1963; and moreover, the plaint does not disclose any triable cause of action. It was also pleaded that U.L.M. Educational Society, Raipur has purchased the suit land whereas the suit has been filed by U.L.M. Educational Society, New Delhi and therefore such a suit is liable to be dismissed invoking Order 7 Rule 11(a) & (d) of the CPC.

4. The said application was replied by the plaintiff opposing the same and stating inter alia that the application has been filed only to delay the proceeding as such triable cause of action has been disclosed, the suit is maintainable and the application under Order 7 Rule 11 of the CPC deserves to be rejected.
5. The trial Court by its impugned order rejected the said application finding no merit in the same holding that the plaintiff Society is duly registered in the State of Chhattisgarh under the Chhattisgarh Societies Registrikaran Adhiniyam,

1973. Feeling aggrieved against the said impugned order, instant civil revisions have been filed questioning the order stating that jurisdictional error has been committed by rejecting the application filed by the defendants under Order 7 Rule 11 of the CPC.

6. Since common question of law and fact is involved in all the four revisions, they were heard simultaneously and are being decided by this common order.
7. Mr. Adil Minhaj, learned counsel appearing for the applicants, would submit that the trial Court has committed grave illegality in rejecting the application filed under Order 7 Rule 11 of the CPC, as the trial Court has failed to notice that the property in question was purchased by U.L.M. Educational Society of Raipur whereas, the suit has been filed by U.L.M. Educational Society registered at New Delhi. He would further submit that the plaintiff is not in possession of the suit land and as such, the relief of possession ought to have been sought by the plaintiff in suit and in absence of such relief in view of the proviso contained in Section 34 of the Special Relief Act, 1963, the suit is liable to be dismissed invoking Order 7 Rule 11(d) of the CPC. He would also submit that the plaintiff Society registered at New Delhi was not competent to purchase the suit land in Chhattisgarh in view of Section 21 of the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 and

as such, the impugned order deserves to be set aside and the civil revisions are liable to be allowed.

8. No one appears for non-applicant No.1 though notices were issued.
9. Mr. S.C. Khakhariya, learned Deputy Advocate General, appears on behalf of the State / non-applicant No.2 which is a formal party.
10. I have heard learned counsel for the parties present and given anxious consideration to the submissions raised therein and also critically examined the record available.
11. In order to judge the correctness of the plea raised at the Bar it would be appropriate to notice Order 7 Rule 11(c) & (d) of the CPC which deals with rejection of plaint. Order 7 Rule 11(a) of the CPC does not disclose a cause of action which reads as follows: -

“**11. Rejection of plaint.**—The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) *** *** ***

(c) *** *** ***

(d) where the suit appears from the statement in the plaint to be barred by any law;

*** *** ***

*** *** ***”

12. Cause of action has neither been defined in the CPC nor it has been defined statutorily but it has been defined judicially

indicating the meaning of what the cause of action is and for that, judgments rendered by Their Lordships of the Supreme Court defining cause of action may usefully and profitably be noticed herein.

13. In the matter of **Kusum Ingots & Alloys Ltd. v. Union of India and another**¹, Their Lordships of the Supreme Court have held that cause of action implies a right to sue. It was held as under: -

“6. 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.”

14. Likewise in the matter of **National Textile Corpn. Ltd. and others v. Haribox Swalram and others**², cause of action has been defined to mean every fact required by the plaintiff to prove in order to support his right to a judgment of the court. It was observed as under: -

“Cause of action as understood in the civil proceedings means every fact which, if traversed, would be necessary for the plaintiff to

1 (2004) 6 SCC 254

2 (2004) 9 SCC 786

prove in order to support his right to a judgment of the court. To put it in a different way, it is the bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant.”

15. Similarly, in the matter of **State Bank of India v. Ranjan**

Chemicals Ltd. and another³, the Supreme Court has

indicated two elements of a cause of action as under: -

“4. The elements of a cause of action are: first, the breach of duty owing by one person to another and; second, the damage resulting to the other from the breach, or the fact or combination of facts which gives rise to a right to sue.”

16. In a recently delivered judgment in the matter of **A.V.M. Sales**

Corporation v. Anuradha Chemicals Private Limited⁴, Their

Lordships of the Supreme Court have held that cause of action

comprises bundle of facts which are relevant for determination

of lis between parties and observed in as under: -

“14. It has often been stated by this Court that cause of action comprises a bundle of facts which are relevant for the determination of the lis between the parties.”

17. Similarly, in the matter of **Church of Christ Charitable Trust**

and Educational Charitable Society represented by its

Chairman v. Ponnamman Educational Trust represented

by its Chairperson/Managing Trustee⁵ Their Lordships of

the Supreme Court relying upon the two earlier decisions

defined cause of action to be bundle of facts which taken with

3 (2007) 1 SCC 97

4 (2012) 2 SCC 315

5 (2012) 8 SCC 706

the law applicable to them gives the plaintiff the right to relief against the defendant. Relevant paragraphs of the report state as under: -

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

14. In A.B.C. Laminart (P) Ltd. v. A.P. Agencies⁶, this Court explained the meaning of “cause of action” as follows: (SCC p.170, para 12)

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to 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 can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor

6 (1989) 2 SCC 163

does it depend upon the character of the relief prayed for by the plaintiff.”

15. It is useful to refer the judgment in [Bloom Dekor Ltd. v. Subhash Himatlal Desai](#)⁷, wherein a three-Judge Bench of this Court held as under: (SCC p.328, para 28)

“28. 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 judgment of the court, (Cooke v. Gill)⁸; in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.”

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.”

18. From a conspectus of the judgments noticed herein, the plaintiff in the suit filed in shape of plaint has to disclose all material facts in order to get decree in his favour thereby disclosing a clear triable cause of action to put the suit for trial.
19. Before proceeding further, it would be appropriate to consider that whether while deciding the application under Order 7 Rule of the CPC, the trial Court is required to look into the plaint only or the written statement or the accompanying application under Order 7 Rule 11 of the CPC has to be seen, as in the instant case, the defendants have relied upon the facts mentioned in their written statement as well as application filed under Order 7 Rule 11 of the CPC and claimed rejection of

⁷ (1994) 6 SCC 322

⁸ (1873) LR 8 CP 107

plaint. It is well settled law that in order to decide the application under Order 7 Rule 11 of the CPC, only the allegations made in the plaint filed by the plaintiff has to be examined, if on the examination of plaint taken as a whole it appears that any of the conditions precedent laid down in Order 7 Rule 11 of the CPC are satisfied then only the plaint has to be rejected, as provision relating to rejection of plaint is a stringent provision contained in the CPC for rejection of the plaint at the threshold. In this regard, the judgment of the Supreme Court in the matter of **Saleem Bhai and others v. State of Maharashtra and others**⁹ may be gainfully noticed herein. In this case, Their Lordships have formulated question in this regard and answered in subsequent part of the report clearly holding that only averment in the plaint has to be seen while considering the application under Order 7 Rule 11 of the CPC. Relevant paragraphs of the report state as under: -

“7. The short common question that arises for consideration in these appeals is, whether an application under O. VII, Rule 11, C.P.C. ought to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary.

9. A perusal of O. VII, R. 11, C.P.C. 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 O. VII, R. 11, C.P.C. 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 Cls. (a) and (d) of R. 11 of O. VII, C.P.C., 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 O. 7, R. 11, C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

20. Similar is the proposition of law struck by the Supreme Court in **Surjit Kaur Gill and another v. Adarsh Kaur Gill and another**¹⁰ in which it was held as under: -

“... For deciding an application under Order 7, Rule 11, one has to look at the plaint and decide whether it deserved to be rejected for the ground raised. ...”

21. In a very recently delivered judgment in the matter of **Om Aggarwal v. Haryana Financial Corporation and others**¹¹, Their Lordships of the Supreme Court reiterated the similar principle holding that for deciding the application under Order 7 Rule 11 of the CPC, only the averments made in the plaint are relevant. It was observed as under: -

“... However, for deciding this question, only the averments made in the plaint are relevant. ...”

22. In an extremely recent judgment rendered by the Supreme Court in the matter of **P.V. Guru Raj Reddy represented by GPA Laxmi Narayan Reddy and another v. P. Neeradha**

10 AIR 2014 SC 1476

11 (2015) 4 SCC 371

Reddy and others¹², Their Lordships have reiterated the same proposition and further held that the averments in the plaint have to be read as a whole to find out whether it discloses a triable cause of action. Paragraph 5 of the report states as under: -

“5. Rejection of the plaint under Order VII Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

23. Thus, from the above-noted decisions of the Supreme Court it is quite vivid that only the plaint allegations are to be examined as a whole to find out whether the application under Order 7 Rule 11 of the CPC is grantable or not, as it is the extraordinary power conferred to the jurisdictional civil Court to get the suit dismissed at the commencement of trial without putting the suit into the full-dressed trial. Therefore, the trial Court has to be circumspect in granting the application under Order 7 Rule 11 of the CPC and such an application should be

12 (2015) 8 SCC 331

granted only if the stringent conditions precedent laid down in Order 7 Rule 11 of the CPC for exercise of that power are fully satisfied.

24. Following the principles laid down by Their Lordships of the Supreme Court in above mentioned judgments for exercise of power under Order 7 Rule 11 of the CPC reverting back to the facts of the case, it would appear that in the instant case, a plea was raised that the suit is barred under Order 7 Rule 11 (a) & (d) of the CPC, as it does not disclose the triable cause of action to which the trial Court did not find favour and rejected holding that the suit discloses a clear triable cause of action on examination of plaint. As held in foregoing paragraphs, only the plaint allegations are to be seen to find out whether the plaint discloses a triable cause of action.

25. In the instant suit filed by the plaintiff, the plaintiff has come out with a clear case that the plaintiff Society has purchased the suit land from defendant No.1 / Shyam Lal Kurmi by registered sale deed dated 28-6-2004 and placed in possession and pursuant thereto, it is continuing in possession, but its name is not recorded in revenue records leading to filing of suit for declaration of title and restraining the defendants from interfering with the suit land. Whereas, on the basis of the plea raised in the written statement and the application under Order 7 Rule 11 of the CPC, it is the case of

the plaintiff that the suit land has been purchased by U.L.M. Educational Society, Raipur, whereas the suit has been filed by U.L.M. Educational Society, New Delhi registered under the Societies Registration Act, 1860 and therefore the said Society of New Delhi has no authority to bring a suit and further plead that the plaintiff is not in possession of the suit land and thus, the suit is barred under the proviso to Section 34 of the Special Relief Act, 1963.

26. The trial Court has clearly recorded a finding after examination of plaint that the plaintiff has averred to be in possession of the suit land, it has purchased the same by registered sale deed and the plaintiff Society is duly registered under the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 on 6-12-2003 being registration No.3222 and the plaint discloses a triable cause of action requiring full trial.

27. After hearing learned counsel for the parties and examination of documents, it would appear that the defendants have filed application under Order 7 Rule 11 of the CPC on the strength of their defence raised in the written statement as well as Order 7 Rule 11 of the CPC holding that the suit is not filed by the competent person and that the plaintiff is not in possession, therefore, the bare suit for declaration and permanent injunction is not maintainable. Following the judgments of Their Lordships of the Supreme Court noticed

herein-above, the plaint allegations have to be seen and perusal of the plaint allegations clearly discloses a triable cause of action, as the plaintiff has pleaded to be in possession and further pleaded a clear material facts disclosing triable cause of action requiring full-dressed trial and therefore, the trial Court has rightly held that the plaint discloses a triable cause of action, as well as the question of plaintiff not in possession raised in the written statement cannot be considered while considering the application under Order 7 Rule 11 of the CPC to terminate the lis while considering the application under Order 7 Rule 11 of the CPC. Thus, I find that the trial Court has not committed any jurisdictional error much less illegality in holding that the plaint discloses a triable cause of action and it is not barred by law. From the statement in the plaint, the suit does not appear to be to be barred by law, as it is the case of the plaintiff that it is in possession of the suit land and it cannot be held that the plaintiff is not in possession on the basis of defendants' defence. Therefore, at this stage, proviso to Section 34 of the Specific Relief Act, 1963 is not attracted.

28. Consequently, all the civil revisions deserve to be and are accordingly dismissed leaving the parties to bear their own costs. Since the suits were instituted on 1-9-2009 and there is no sufficient progress in trial, the trial Court is directed to

conclude the same expeditiously and preferably within a period of six months from the date of receipt / production of a copy of this order.

Sd/-
(Sanjay K. Agrawal)
Judge

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