

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 SECOND APPEAL NO. 286 OF 2017

Prabhavati W/o Prabhu Bawage
Age: 69 years, Occu.: Pensioner,
R/o. Mitra Nagar, Latur,
Taluka & District – Latur.

..Appellant

Versus

1] Prayagbai W/o Sutrappa Inde
Since deceased through L.Rs.

1A] Chandrashekhar Sutraapa Inde
Age: 65 years, Occu.: Business.

1B] Suresh Sutraapa Inde
Age: 62 years, Occu.: Business.

1A & 1B R/o. Behind District Court,
Tilak Nagar, Latur, Dist.Latur.

1C] Malikarjun Sutraapa Inde
Age: 58 years, Occu.: Service,
R/o. Khandoba Galli,
Latur, Dist.Latur.

2] Sarubai W/o Baburao Nila
Age: 65 years, Occu.: Household,
R/o.Kambulga, Taluka – Shiranpal,
Dist.Latur.

3] Jaishree W/o Omprakash Mahajan
Age: 48 years, Occu.: Household,
R/o. Mahajan Galli, Sonpeth,
Tq.Sonpeth, Dist.Parbhani.

4] Nilkanth S/o Omprakash Mahajan
Age: 24 years, Occu.:
R/o.Mahajan Galli, Sonpeth,
Tq.Sonpeth, Dist.Parbhani.

- 5] Priyanka D/o Omprakash Mahajan
Age: 21 years, Occu.:
R/o. Mahajan Galli, Sonpeth,
Tq.Sonpeth, Dist.Parbhani.
- 6] Rajeshwar S/o Panchakshriappa Mahajan
Age: 64 years, Occu.:
R/o. Mahajan Galli, Sonpeth,
Tq.Sonpeth, Dist.Parbhani.
- 7] Manmath S/o Panchakshriappa Mahajan
Age: 61 years, Occu.:
R/o. Mahajan Galli, Sonpeth,
Tq. Sonpeth, Dist.Parbhani.
- 8] Shakuntalabai W/o. Vishwanathappa Tondare
Age: 70 years, Occu.:
R/o. Somnathpur,
Taluka – Udgir, Dist.Latur.
- 9] Manoj S/o Sangramppa Belure
Age: 49 years, Occu.:
R/o. Peth Mehboob Gunj,
Nilanga, Dist.Latur.
- 10] Somnath S/o Sangramappa Belure
Age: 47 years, Occu.:
R/o. Peth Mehboob Gunj, Nilanga,
Tq.Nilanga, Dist.Latur.
- 11] Jaishree W/o Shivraj Bawge
Age: 51 years, Occu.:
R/o. C/o. Executive Engineer,
M.S.E.B., Unit No.8, Sale Galli,
Latur, Dist.Latur.
- 12] Mahananda W/o Haribhau Sakhare
Age: 45 years, Occu.:
R/o. C/o. Haribhau Sambhaji Sakhare
Indira Nagar, Katraj, Pune -09.

..Respondents

...
Advocate for Appellant : Shri S.P.Shah
Advocate for Respondent No.2 : Shri Mukul Kulkarni h/f.
Shri A.S.Shivpuje
Respondent Nos.1A to 1C, 3 to 11 served - absent
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CORAM : P.R.BORA, J.

DATE: 1st August, 2018

ORAL JUDGMENT:-

1. Heard learned Counsel for the appellant and learned Counsel appearing for the respondent No.2.

2. The present appellant had filed Regular Civil Suit No.130 of 2009 against the present respondents in Civil Court at Nilanga for declaration. The learned Civil Judge, Senior Division, Nilanga vide order passed on 25.03.2010 rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure. The appellant challenged the said order by filing Regular Civil Appeal No.23 of 2010 in the District Court at Nilanga. The learned District Judge-1, Nilanga vide the Judgment and order passed on 19.06.2015 dismissed the said appeal. Aggrieved by the orders passed by the Courts below, the appellant i.e. original plaintiff had preferred the present Second Appeal.

3. Shri S.P.Shah, learned Counsel appearing for the appellant has

assailed the orders passed by the Courts below on various grounds. The learned Counsel submitted that the Courts below have grossly erred in rejecting the plaint on the ground that it does not disclose the cause of action. The learned Counsel inviting my attention to the averments in the suit plaint in Regular Civil Suit No.130 of 2009 submitted that it very well discloses cause of action for filing the suit by the appellant – plaintiff. The learned Counsel submitted that the Courts below misread and misconstrued the plaint by adopting a too technical approach causing grave injustice to the appellant – plaintiff. Relying on the Judgment of the Hon'ble Apex Court in the case of ***Popat and Kotecha Property Vs. State Bank of India Staff Association***, reported in 2005 (7) SCC, 510. The learned Counsel submitted that it is the cardinal canon of interpretation that the pleadings have to be read as a whole to ascertain its true import properly. The learned Counsel more particularly relied upon the observations made by the Hon'ble Apex Court in paragraph No.19 of the Judgment, which read thus:-

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of context in isolation. Although it is the substance and not merely the form that has to be

looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.“

4. The learned Counsel also invited my attention to the observations made by the Hon'ble Apex Court in paragraph No.20 of the said Judgment to the effect that the real object of Order VII Rule 11 of the Code of Civil Procedure is to keep out of Courts irresponsible law suits. The learned Counsel also invited my attention to paragraph Nos.16, 17 and 18 of the said Judgment wherein the Hon'ble Apex Court has held that:-

“16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T.Arivandandam V. T.V.satyapal*)

17. It is trite law that not any particular plead has to be considered and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi V. Nachhattar Singh Gill* only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & co. Ltd. V. Ganesh Property* it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.”

5. Relying upon the Judgment of the Hon'ble Apex Court in the case of ***Des Raj and Ors. Vs. Bhagat Ram (deceased by LRs) and Ors.*** reported in ***AIR 2007 SC (Supp) 512***, the learned Counsel submitted that mofussil pleadings must be construed liberally. Failure in not using accurate words in the plaint or some mistakes committed in formulating some sentences, more particularly, in regard to the accrual of cause of action for filing the suit by the appellant plaintiff *ipso facto* would not mean and should not have been interpreted by the Courts below to mean that there was no cause of action for filing the suit by the appellant – plaintiff. The learned Counsel also relied upon the Judgment of this Court in the case of ***Varron Auto Kast Ltd., Nagpur Vs. Ravi Ramesh Muthal and others***, reported in ***2017 (6) Mh.L.J., 277*** to buttress his agreement that for deciding whether plaint discloses cause of action, averments made in the plaint are to be the guiding

factors and they have to be read in its entirety.

6. The learned Counsel submitted that if the plaint in Regular Civil Suit No.130 of 2009 is read as a whole, it discloses that the the appellant – plaintiff claims herself to be the sole successor of the properties left behind by deceased Parwatibai w/o. Sharanappa Asture on the basis of the registered Will executed by said Parwatibai in her favour on 10.04.1996. It further discloses that the defendants in the suit were about to deny the aforesaid fact and that was the reason that plaintiff was constrained to file a suit against them. The date on which the cause of action arose is mentioned in the immediate next paragraph. According to the learned Counsel, the facts mentioned in the suit plaint sufficiently constitute the cause of action for filing the suit by the appellant – plaintiff. The learned Counsel submitted that the First Appellant Court has failed in appreciating the pleadings in the plaint in proper perspective and more particularly has misconstrued the sentence in the plaint “that the defendants are out to deny this fact, the suit being raised”. The learned Counsel submitted that from the fact that the appellant – plaintiff was constrained to file a suit seeking declaration against the defendants leads to only inference that defendants have denied the right so accrued in favour of the appellant – plaintiff and no other meaning was possible to be drawn. The learned Counsel further submitted that the plaint is thus sufficiently disclosing the cause of action

for filing the suit by the appellant – plaintiff.

7. Shri Mukul Kulkarni, learned Counsel appearing for respondent No.2 opposed the submissions made on behalf of the appellant. The learned Counsel submitted that the Courts below have not committed any error in rejecting the plaint on the ground that it does not disclose any cause of action. The learned Counsel further submitted that even if the suit plaint is read in its entirety, it is difficult to accept the contention of the appellant that it discloses the cause of action for filing the suit. The learned Counsel submitted that the appellant is claiming herself to be the sole heir and successor of the properties of her deceased mother Parwatibai on the strength of the Will executed by said Parwatibai in her favour, however, if the genealogy as is given in the suit plaint is perused, it does not contain the name of the appellant. The learned Counsel further submitted that though the declaration is sought in respect of the properties left behind by deceased Parwatibai, in the entire suit plaint, the particulars of the said properties are not provided. The learned Counsel further submitted that in the suit plaint, the plaintiff herself had disclosed the fact of pendency of Second Appeal No.781 of 2006 in the High Court arising out of Regular Civil Suit No.451 of 1990, which was filed by deceased Parwatibai claiming recovery of the possession of the properties owned by her against one vaijinath s/o Babu @ Karbasappa Asture. The learned Counsel submitted that said Vaijinath is

adoptive son of deceased Parwatibai and as such he was also necessary party to the suit filed by the appellant. The learned Counsel further submitted that the suit itself was not maintainable only for declaration without seeking any consequential relief.

8. The learned Counsel further submitted that the sentence in paragraph No.7 of the suit plaint that “since the defendants are out to deny this fact, the suit is raised against them” even if liberally construed, cannot be interpreted to mean in absence of necessary minimum particulars that the defendants denied the right of the appellant – plaintiff. In the circumstances, according to the learned Counsel, both the Courts below were right in holding that the suit plaint does not disclose any cause of action. The learned Counsel therefore, prayed for dismissal of the appeal. In order to support the contentions raised by him, the learned Counsel relied upon two Judgments of the Hon'ble Apex Court; first in the case of ***N.V.Srinivasa Murthy and Others Vs. Mariyamma (Dead) by proposed Lrs. and Others***, 2005 (5) SCC, 548 and the other in the case of ***Patasibai and Others Vs. Ratanlal***, 1990 (2) SCC, 42.

9. Whether the Courts below have committed any error in rejecting the suit plaint on the ground that it does not disclose any cause of action is the question, which falls for consideration in the present appeal.

10. The appellant had filed the suit seeking declaration that she alone is the heir and successor of the properties left behind by her deceased mother namely Parwatibai on the strength of Will executed by deceased Parwatibai in her favour. It is evident that declaration was sought against the defendants. The cause of action for filing the suit against the defendants is stated in paragraph No.7 of the suit plaint. I deem it appropriate to reproduce paragraph No.7 *ad verbatim* which reads thus:-

“7. In view of what is stated above the plaintiff says and maintains that since the said will of the said deceased Parwatibai was never revoked nor even it was set aside by her at any time in her life time, it is the plaintiff alone who is entitled to claim to be the only person who is entitled to claim the rights and interest of the said Parwatibai after her death, but since the defendants are out to deny this fact the suit is being raised against them.”

11. The objection apart whether the suit seeking the declaration simpliciter without any consequential relief was maintainable, when the declaration of ownership to the properties left behind by deceased Parwatibai was sought by the appellant – plaintiff to the exclusion of the other legal heirs of deceased Parwatibai, who are arrayed as the defendants in the suit plaint, the plaint must have been containing the minimum particulars in specific terms that in what manner and particularly by whom

and when the right so accrued in favour of the plaintiff was objected to, so that the appellant – plaintiff was constrained to file the suit. The general rules of pleading require that the plaint must contain the relevant facts with necessary minimum particulars from which the Court may infer that the plaintiff has a cause of action for filing the said suit and not a bare statement that the plaintiff has a good cause of action. If the plaintiff fails in stating the material facts, which form part of the cause of action of his claim, his plaint would be liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure. If the plaint in the present matter is read as a whole and the pleadings are construed liberally, even then what can be gathered is the fact that on apprehension that the defendants may deny the fact that deceased Parwatibai had bequeathed her entire property in her favour, the plaintiff had filed the suit. The Trial Court as well as the First Appellate Court have therefore, rightly held that mere apprehension and a bare statement that cause of action arose on 27.03.2009 was not sufficient for the plaintiff to file the suit without giving any further particulars. I therefore, do not see any reason to cause interference in the orders impugned in the present appeal. The appeal therefore fails. Needless to state that the plaintiff is however, not precluded from filing a fresh suit.

(P.R.BORA)
JUDGE