

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.202 OF 2017

- 01 Jugalkishor s/o Dwarkadas Loya,
age: 40 years, Occ: Business,
R/o Shrinagar, Behind Ashwamedh
Hotel, Barshi Road, Latur,
Tq. & District Latur.
- 02 Santoshkumar s/o Dwarkadas Loya,
age: 34 years, Occ: Business,
R/o Shrinagar, Behind Ashwamedh
Hotel, Barshi Road, Latur,
Tq. & District Latur.
- 03 Sow. Manjushree Narendra Mantri,
age: 33 years, Occ: Household,
R/o Satyam Apartment, Samrat
Chowk, Solapur, Tq. & District
Solapur.
- 04 Smt.Shakuntalabai Dwarkadas Loya,
age: 61 years, Occ: Household,
R/o Shrinagar, Behind Ashwamedh
Hotel, Barshi, Latur,
Tq. & District Latur.

Applicants

Versus

- 01 Purushottam Gulabchand Loya,
age: 47 years, Occ: Business,
R/o 107, in front of Ramkrishna
Mangal Karyalaya, Motinagar,
Latur, Tq. & District Latur.
- 02 Sow. Usha Vinod Mundada,
age: 42 years, Occ: Household,
R/o C/o Vinod Ganeshlalji Mundada,
Kirana Shop, Ambad,
Tq. Ambad, District Latur.
- 03 Sow. Lata Rambilas Sarda,
age: 38 years, Occ: Household,

R/o Marwadi Galli, Mangalwedha,
District Solapur.

04 Harakchand Gulabchand Loya,
age: 64 years, Occ: Business,
R/o Dev Apartment, Sitaram
Nagar, in front of Mahadeo Temple,
Latur, Tq. & District Latur.

05 Smt. Kamalbai Raghuraj Somani,
age: 66 years, Occ: Household,
R/o Ujni, Tq.Ausa, Dist.Latur.

06 Sow.Kesharbai Subhashchandra
Baheti, age: 62 years, Occ:
Household, R/o Soinar Galli,
Nilanga, Tq. Nilanga, Dist.Latur.

07 Sow. Shantabai Harinarayan
Dargad, age: 60 years, Occ:
Household, R/o C/o Amol Steels,
Bazar Chowk, Ghatnandur,
Tq.Ambejogai, District Beed.

08 Sow.Vimalbai Mukund Marda,
age: 53 years, Occ: Household,
R/o 1232, North Kasba,
Tilak Chowk, Solapur,
Tq. & District Solapur.

Respondents

Mr.G.R.Syed, advocate for applicants
Mr.Swapnil S. Rathi, advocate for Respondent No.1.

CORAM : M.S.SONAK, J.
DATE : 05th February, 2018.

ORAL ORDER :

1 Heard learned Counsel for the parties.

2 The challenge in this Revision Application is to the order dated 06.11.2017, by which, the learned trial Judge has rejected the applicants' application under Order 7 Rule 11 of the Code of Civil Procedure, urging for rejection of the plaint on the ground that it does not disclose cause of action and that the suit, appears from the statement in the plaint, to be barred by law.

3 Learned Counsel for the applicants submits that from reading of the plaint, it is clear that no cause of action has been disclosed. He submits that the suit is barred by non-joinder of necessary party i.e. MIDC; and further, from the averments in the plaint, it is quite clear that the suit is hopelessly barred by law of limitation. He submits that if the suit is permitted to proceed and if any temporary injunction is granted therein, same will result in holding the compensation amount, which has already been awarded to the applicants, for indefinite period of time. He submits that if ultimately, the suit is bound to fail, there is no useful purpose by continuing the suit. He submits that, instead, it is appropriate, power under Order VI Rule 11 is exercised and plaint itself is rejected. He relies upon **T. Arivandandam Vs. T. V. Satyapal and another**, AIR 1977 SC 2421, **Popat and Kotecha Property Vs. State Bank of India Staff Association**, (2005) 7 SCC 510, **Shri Jahangir @ Jawahar & another Vs. Smt. Maureen De Sequeira**, 2018 (1) All MR 330; **Suresh Kumar Dagla Vs. Sarwan**, 2016 (4) All MR 487 (SC), **Ramlal Maniram Navdhinge Vs. Maniram Patiram Navdhinge & others**, 2008 (1) All MR 699; **Smt. Jayashree Ashok Goregaonkar Vs. Kanta Chandrakant Mhatre & others**, 2006 (3) All MR 71, **Mohan Chandra Tewari Vs. Harish Chandra Bhandari**, AIR 2003 Uttaranchal 10, in

support of his contentions.

4 He submits that in the present case, partition has been applied in respect of only one of the properties, when, admittedly, there is claim that the plaintiff is co-owner along with defendants of other properties. He submits that on this ground also, the suit is not maintainable, since, all properties claimed to be joint properties, have to be brought in the suit. For all these reasons, he submits that this is a case for rejection of the plaint under Order VI Rule 11 of the Code of Civil Procedure.

5 On perusal of the plaint and upon consideration of the objections raised by the applicants, it cannot be said that there is failure to disclose cause of action. At the highest, the case of the applicants is that the cause of action pleaded by the plaintiffs is false or is bound to ultimately fail. There is a difference between the cause of action being false or likely to suffer failure on non disclosure of cause of action. It is only in the case of non disclosure of cause of action, the plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure. In this case, on reading of the plaint, it cannot be said that the case of such degree, so as to suggest failure of even disclosure of cause of action, is made out. Accordingly, there is no jurisdictional infirmity on the part of the trial Court in refusing to reject the plaint on the ground of failure to disclose the cause of action.

6 The decisions relied upon by the applicants, no doubt, require the Courts to read the plaint meaningfully and in its entirety in order to detect whether a mere illusion of cause of

action has been created by way of clever drafting. In the present case, even upon meaningful reading of the entire plaint, it cannot be said that this is a case of illusion as a result of clever drafting. The contention of the applicants, that the suit will ultimately fail, is not a contention, which can be decided at the stage of consideration of an application under Order VII Rule 11 of the Code of Civil Procedure.

7 The contentions as regards non-joinder of any necessary party or not suing for partition in respect of all the joint properties held or even for that matter, bar of limitation, are the contentions which cannot be answered in favour of the applicants on the basis of reading of any statement in the plaint. Ultimately, these are the defences raised by the applicants and such defences would require adjudication and consequently evidence. The trial Court rightly said that in such a situation, it will not be appropriate to exercise powers under Order VII Rule 11(d) of the Code of Civil Procedure.

8 In the plaint, it is the case of the plaintiffs that some of the plaintiffs were minors. It is the case of the defendants that there was a family partition in the year 1983, which was re-affirmed in the year 2004. Now, all these are matters, which pose a serious dispute and, therefore, would require adjudication. All that the learned trial Court has held is that these are not the matters which can be decided at the stage of adjudicating an application under Order VII Rule 11 of the Code of Civil Procedure. The learned trial Judge has granted specific liberty to the applicants to raise all these contentions as and by way of defence.

The decisions relied upon by the applicants do not lay down any proposition contrary to the one followed by the learned trial Judge.

9 For all the aforesaid reasons, it cannot be said that the impugned order suffers from any jurisdictional error or perversity. Accordingly, this Civil Revision Application is dismissed. There shall be no order as to costs.

10 However, it is clarified that the observations in the impugned order or in the present order are for limited purpose of deciding applicants' application under Order VII Rule 11 of the Code of Civil Procedure and, therefore, none of these observations will influence the trial Court while deciding the suit on its own merits and in accordance with law.

M.S.SONAK
JUDGE

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