

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.62 OF 2018**

1. Smt. Urmila Palicha alias
Urmila U. Palicha, Wife of
late Uday Kumar Palicha
alias Udayakumar Palicha
alias Udaykumar Palicha,
aged 64 years, housewife,
Resident of Flat No.1-04,
ground floor, Ashad Co-operative
Housing Society Ltd.,
Madel, Margao Goa.
 2. Anand Palicha alias
Anand Udaykumar Palicha,
Son of late Uday Kumar Palicha
alias Uday Kumar Palicha
alias Udayakumar Palicha or
Udaykumar Palicha,
Aged 14 years, student,
Resident of Flat No.1-04,
Ground Floor, Ashad Co-operative
Hsg. Soc. Ltd. Madel, Margao Goa.
Through his next friend,
mother and natural guardian
Smt. Urmila Palicha, Widow of
Uday Kumar Palicha,
Aged 64 years, housewife,
and now major in age,
19 years, Businessman,
Resident of Flat No.1-04,
Ground Floor, Ashad Co-operative
Housing Society Ltd. Madel,
Margao Goa.
- ...Appellants

Versus

1. The Civil Registrar cum
Sub-Registrar of Salcete,
2nd Floor, Osia Complex,
D Wing, Near K.T.C. Bus stand,
Margao-Goa.
2. State Registrar cum

Head of Notary Services,
1st Floor, Congress House,
Panaji-Goa.

3. State of Goa,
Through its Chief Secretary,
Assembly Complex, Porvorim, Goa.
4. The Karnataka Bank Ltd.,
Through its Branch Manager,
Margao Branch,
Opposite Municipal Garden,
Margao-Goa.

.... Respondents

Shri S.S. Kakodkar, Advocate for the Appellants.

Ms. Priyanka Kamat, Additional Government Advocate for the
Respondent No.1,2 & 3.

Coram : NUTAN D. SARDESSAI, J.

Reserved on : 20th AUGUST, 2018

Pronounced on : 24th AUGUST, 2018

JUDGMENT :

Heard Admit. Parties were put to notice that the matter would be finally heard at the admission stage. Learned Additional Government Advocate waives service on behalf of the respondents no.1,2 & 3.

2. The appellants have challenged the decree dated 04/04/2018 passed by the District Judge-1, South Goa, Margao pursuant to which an application under Order VII Rule 11(a) CPC came to be allowed and the plaint rejected by the learned District Judge. The parties would be referred to as the appellants and the respondents respectively for brevity's

sake hereinafter.

3. The appellants challenged the impugned order on the grounds that the Trial Court fell in error to hold that there was no cause of action when Order VII Rule 11(a) CPC clearly dealt with the case when the plaint did not disclose a cause of action and the plaint at her instance was disclosing a cause of action. The scope of the application under Order VII Rule 11 CPC was limited and the Trial Court had extended the scope by passing the impugned order. The Trial Court had exceeded its jurisdiction while entertaining the application under Order VII Rule 11 CPC. The Trial Court failed to appreciate that there was a distinction between a plaint which did not disclose a cause of action and the suit which was not maintainable. The Trial Court erred to reject the plaint without any application/motion taken out by the respondents particularly when they had appeared in the suit, filed their written statement in defence and the matter was ripe for final judgment after the defence was led in the matter.

4. The Trial Court erred to reject the plaint at the stage after the framing of issues, leading evidence and the written

submissions being filed on the merits of the case. The Trial Court failed to appreciate that there was a difference between non-disclosure of a cause of action and a defective cause of action. The defective cause of action, if any, had to be decided during the trial of the suit and not under Order VII Rule 11(a) of CPC. The impugned order lacked correctness, legality and propriety. The Trial Court failed to appreciate that the suit was filed as the respondent no.4 had refused to transfer the savings bank account or encash or transfer the said deposit of her deceased husband and the father of the appellant no.2 and the respondent no.1 refused to register the marriage and therefore she could not execute a Deed of Succession without the proof of registration of their marriage. The Trial Court erred to conclude that there was absolutely no averment that the respondents had denied or were interested to deny that the appellants were the widow and the child of the deceased or that they were not entitled to the said account. The Trial Court erred in not applying the law laid down in **Smt. Swati Anil Sakpal V/s. State of Maharashtra & Ors. [2008 (1) ALL MR 125]**, and further ignored the judgment in **Ranganath Parmeshwar Panditrao Mali & Anr. V/s. Eknath Gajanan Kulkarni &**

Anr. [1996 (1) U.J. (S.C.) 548]. The Trial Court erred in dismissing the application under Section 65 of the Indian Evidence Act particularly when the appellants had led evidence pursuant to the orders of the Court. The impugned order was a non-speaking order and did not disclose legal reasons to reject the plaint. The impugned order was therefore liable to be interfered with and quashed and set aside.

5. Heard Shri S.S. Kakodkar, learned Advocate on behalf of the appellants who adverted to the pleadings and the reliefs claimed in the suit in particular. The issues in the case were settled by the Trial Court and on one fine day the Trial Court suo moto took cognizance of its jurisdiction, asked the parties to address itself on order VII Rule 11 CPC. He next adverted to the various pleadings in the plaint and submitted that the Trial Court had failed to look into the same and that it was on the basis of the pleadings in the plaint that it could be rejected by recourse to Order VII Rule 11 CPC. The Trial Court had overlooked the fact that the respondents had filed their written statement in defence, issues were framed and the list of witnesses were filed. He next adverted to the

impugned order where the learned Judge had made a clear finding that the matter was at the stage of judgment and yet brought it upon himself to direct the appellants to show whether the suit was maintainable against the respondents as it did not disclose a cause of action against the respondents.

6. Shri S.S. Kakodkar, learned Advocate for the appellants placed reliance in **Jageshwari Devi & Ors. V/s. Shatrughan Ram [(2007) 15 SCC 52]** in support of his case. It was his contention that even assuming without admitting that there was a defective cause of action, the Trial Court could not have dismissed the suit and in that context placed reliance in **Prabhudayal S/o. Ramkhilawan Pande V/s. Smt. Shantabai wd/o. Shyamsunder Pande & Ors. [2016 (4) ALL MR 85]**. He placed further reliance in **Indian Oil Corporation Ltd. V/s. Ramesh s/o. Wasanji Kariya & Ors. [2017 (3) ALL MR 544]** and that in **Shri Prahladsingh Ramkhilaansingh (D) by his heir and LR V/s. Sudhir J. Bhalekar & Anr. [2013 (6) ALL MR 843]** while closing his arguments that there was no scope for the Trial Court to invoke the provisions of Order VII Rule 11 and to reject the plaint.

7. Ms. Priyanka Kamat, learned Additional Government Advocate for the respondents no.1,2 & 3 submitted by adverting to the pleadings that non-compliance with Section 80 CPC notice did not give rise to the cause of action to the appellants to file the suit. It was a mandatory requirement with which the appellants had to adhere and that at the highest it could be considered as a continuing cause of action and not a primary cause for filing the suit. She adverted to the impugned order and submitted that there was no error in the findings rendered by the learned District Court. The District Court had rightly rejected the plaint and therefore no interference was called for with the order under challenge. She placed reliance in **Smt. Swati Anil Sakpal V/s. State of Maharashtra & Ors. [2008 (1) ALL MR 125]**.

8. i would consider their submissions, the judgments relied upon in the light of the pleadings and Order VII Rule 11 CPC and decide the appeal appropriately. The appellants as the original plaintiffs had filed the suit for declaration and consequential reliefs carving a case that she was married to late Uday as per the Hindu religious rites, that she had

completed 18 years of age at the time of her marriage to the husband who was 21 years old and that their marriage was not registered before the Civil Registrar on account of ignorance. It was her case that a son was born namely the appellant no.2 out of the said marriage who was studying in a school in Margao. She had the document such as an Election Identity Card apart from a Ration Card in her name and that of her late husband who was holding bank accounts and Fixed Deposits in his name. She had approached the bank to transfer the amounts in her name, addressed a letter to the Civil Registrar to register her marriage which was turned down as no such registration could be done upon the death of her husband. She was otherwise helpless as she could not execute the Succession Deed without the proof of registration of her marriage and therefore she was constrained to issue a legal notice to the respondents under Section 80 CPC. Despite the receipt of notice the respondents had not replied to her notice and thereupon she was constrained to file the suit for the relief of declaration, for registration of her marriage, her entitlement to the assets left behind by her late husband and directions appropriately to the respondent no.4 Bank in her favour.

9. Order VII deals with the predicates of a plaint and in terms of Rule 11 it provides for a rejection of the plaint

- (a) on the ground that it does not disclose a cause of action,
- (b)
- (c)
- (d)
- (e)
- (f)

In other words, it is only where the pleadings in the plaint do not disclose a cause of action that the Trial Court can reject the plaint. Here was a peculiar case where the appellants had disclosed a cause of action, the written statements were filed by the respondents in defence, issues were settled by the Court, list of witnesses were filed and the parties went to trial. Thereupon, the arguments were heard/filed and it is only at the stage of the judgment that wisdom dawned on the Trial Judge to call upon the appellants to show that the suit was maintainable against the defendants as in his estimation it did not disclose a cause of action. What really dawned on the Trial Judge to hold so without any

application or memo on behalf of the respondents is beyond the realm of comprehension.

10. In **Jageshwari Devi** (supra), the Hon'ble Apex Court held that non-disclosure of a cause of action was distinct from a defective cause of action. The former falls but the latter does not fall within the scope of Order VII Rule 11(a) and the latter is to be decided during the Trial of the suit. Therefore the Apex Court did not find favour with the contention on behalf of the appellants that the disclosed cause of action was vague and incomplete and not being a ground for rejection of the plaint and therefore no exception could be taken to the order. In **Prabhudayal** (supra), a learned Single Judge of this Court held at para 17 that while examining the impugned order passed under Order VII Rule 11(a) and (d) of the Code, that there was no need to dwell upon the issue raised as to the maintainability of the suit since he had observed that once the issues are framed on the basis of the written statement filed by the defendants, it was obligatory for the trial Judge to hear the parties, receive evidence, if any and then to pronounce the judgment on all issues notwithstanding the issue of maintainability raised by the parties in respect of the

suit.

11. Prima facie, on perusal itself it was clear that the provisions under Order VII Rule 11 CPC and Order XIV operate at different stages of the suit and although the Trial Court has power of rejecting the plaint at any stage of the suit, the principles of law which are required to be considered by the Court in respect of a decision to be taken under Order VII Rule 11 CPC are different than the principle of law which the Trial Court must abide by after having framed the issues on the basis of the written statement. Order VII Rule 11 of the CPC operates when the Court upon a perusal of the plaint is satisfied that the plaint shall be rejected for non disclosure of a cause of action or if it is deliberately undervalued or improperly valued for the purposes of payment of stamp duty or when it is barred by any law on the basis of the statement made in the plaint itself or when the plaintiff fails to comply with the directions of the Court in the matter of filing copies of the plaint or correction of valuation, court fees etc. In that case, upon a perusal of the plaint itself, without looking into any evidence, examining the merits of the matter, the Court may reject the plaint.

12. In **Indian Oil Corporation** (supra), a learned Single Judge of this Court held that while considering an application under Order VII Rule 11 CPC only the averments in the plaint are required to be taken into consideration. The averments in the plaint have to be assumed to be correct. If on a meaningful reading of the entire plaint cause of action is disclosed then the plaint is not liable to be rejected under Order VII Rule 11 CPC. No defence nor any extraneous material at the instance of defendants can be looked into at this stage. The question as to whether a cause of action as pleaded would fructify into a decree, cannot be gone into at the stage of considering such a prayer. In **Prahladsingh** (supra), another judgment of a learned Single Judge of this Court, the question at large before the learned Judge was whether the Trial Judge erred in law to reject the plaint under Order VII Rule 11 CPC. In the facts of this case, the appellants had filed the suit for certain reliefs including declaration and permanent injunction. The issues were framed by the Trial Court based on the pleadings traversing those in the plaint. The learned Trial Judge however without giving any opportunity to the parties to adduce any oral

evidence held that the plaintiffs were jealous of the second defendants that they will get two flats in the proposed building. According to the learned Judge, the plaintiffs did not have cause of action to sue the defendants and were not entitled to challenge the agreement between the first and the second defendants and therefore without recording any evidence upon the issues framed, ordered the rejection of the plaint under Order VII Rule 11(a) CPC giving rise to the appeal. In that context, the learned Single Judge observed at para 8 as below:

"8. The rule of procedure mentioned as above would make it clear that the trial Judge would be careful normally to observe the principal rule unless he has justification to depart from it and to adopt a short cut method to reject the plaint by avoiding answering all other issues arising in the case. Once pleadings are completed by the parties, the trial Judge has obligation as normal rule to frame the issues in respect of the averments made in the plaint and traversed by the defendants in their written statements so as to meet all the issues in real controversy between the parties by a well reasoned Judgment. Even if judge decide to depart from the normal rule and frame preliminary issues and postpone all other issues arising on the basis of pleadings submitted and completed by the parties, the preliminary issues framed are required to be decided as stated in exceptions alone i.e. relating to the jurisdiction of the court and if the suit is barred by any law. The normal rule is to answer all issue framed after offering the parties an opportunity to adduce evidence thereon. This care was not taken in the present

case.”

13. In **Smt. Swati Anil Sakpal** (supra), it was her case that she was married to the deceased Anil Sakpal on 04/05/1999 and who expired on 23/02/2006. She thereafter applied for a full time course for seats in D.Ed. courses reserved for widows but she was called upon to produce marriage registration certificate. She applied but considering Section 6 of the Maharashtra Regulation of Marriages Bureaus and Registration of Marriages Act, 1998, the same was refused giving rise to the petition challenging the constitutional validity and other reliefs. The Division Bench considered Section 6 of the said Act and held that they had no hesitation to construe Section 6(2) and the proviso, to mean that it was open to the wife/widow under the said provisions to apply for registration on failure by the husband under Section 6(1) of the Act. This judgment is clearly distinguishable in the facts of the case and can have no application where the issue was whether the Trial Court was justified in rejecting the plaint at the stage when the matter was listed for judgment. The question whether she was entitled to get the registration of her marriage done otherwise was a matter which the Trial Court had to decide on

the merits of the case, when the parties had led evidence and gone to trial. However, one fails to understand the wisdom of the learned District Judge to call upon the appellants to show whether the suit was maintainable as in his assessment, it did not disclose a cause of action contrary to the case in defence who had contested the suit, issues were framed and the parties led evidence in the matter with it ripe for disposal by judgment. The learned Judge therefore completely fell in error to reject the plaint on the specious premise that it did not disclose a cause of action warranting interference by this Court in appeal.

14. In the result, therefore i allow the appeal and the impugned order is quashed and set aside. The learned District Judge is directed to proceed with the matter and pronounce the judgment on the merits of the case. The parties are directed to appear before the District Court on 10/09/2018 at 10.00 hrs.

NUTAN D. SARDESSAI, J.

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