

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.168 OF 2017

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|-------------------------------------|---|-----------------------|
| 1. Naseembi Kamaruddin Sande, |] | |
| Age : 68 years, Occ. Household. |] | |
| 2. Nassruddin Kamaruddin Sande, |] | |
| Age : 45 years, Occ. Business. |] | |
| 3. Jamir Kamaruddin Sande, |] | |
| Age : 42 years, Occ. Business. |] | |
| 4. Riyaz Kamaruddin Sande, |] | |
| Age : 38 years, Occ. Business. |] | |
| All residing at 243, Shaniwar Peth, |] | |
| Sande Plaza, Karad, Tal. Karad, |] | Applicants / |
| District Satara. |] | (Original Defendants) |

Versus

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| 1. Faruq Abdul Rahim Patel, |] |
| Age : 55 years, |] |
| Occ. Agriculturist and Business, |] |
| R/at 203, Golden Plaza, Shaniwar Peth, |] |
| Tal. Karad, Dist. Satara. |] |
| 2. Nurulhasan Abdul Rahim Patel, |] |
| Age : 52 years, |] |
| Occ. Agriculturist and Business |] |
| 3. Ayub Abdul Rahim Patel, |] |
| Age : 49 years, |] |
| Occ. Agriculturist and Business |] |
| 4. Mohd. Gaus Abdul Rahim Patel, |] |
| Age : 46 years, |] |
| Occ. Agriculturist and Business |] |

5. Rashid Abdul Rahim Patel,	]	
Age : 41 years,	]	
Occ. Agriculturist and Business	]	
Respondent Nos.2 to 5 are residents	]	
of 243, Shaniwar Peth, Karad,	]	 Respondents /
Tal. Karad, Dist. Satara.	]	(Original Plaintiffs)

Mr. Kalpesh U. Patil for the Applicants.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH JANUARY 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Applicants.
2. By this Revision Application, filed under Article 227 of the Constitution of India, the Applicants are challenging the order dated 20th February 2017 passed by the Civil Judge, Senior Division, Karad, below “Exhibit-33” in Special Civil Suit No.22 of 2013. The application at “Exhibit-33” was filed by the present Applicants under Order VII Rule 11(a) and (d) of C.P.C. for rejection of the plaint. The Applicants are the Original Defendants in the Suit.
3. It is submitted by learned counsel for the Applicants that, Respondents have filed a Suit for possession of the suit premises and for getting arrears of the lease amount. However, the entire plaint is silent

as to when the premises, described in paragraph No.1(B) of the plaint, were given on lease to the Applicants and hence, one of the necessary fact for constituting the cause of action is not at all pleaded. Secondly, it is submitted that, the present Suit is also barred under Section 149 of the Maharashtra Regional and Town Planning Act, 1966, as the property has come under 'reservation'. On both these counts, the Trial Court should have rejected the plaint. However, the Trial Court has not done so and, conversely, rejected the Applicants' application to that effect and hence, the impugned order of the Trial Court needs to be quashed and set aside.

4. In support of his submissions, learned counsel for the Applicants has placed reliance on the Judgment of the Apex Court in the case of *Church of Christ Charitable Trust & Educational Charitable Society (represented by its Chairman) Vs. Ponniamman Educational Trust (represented by its Chairperson/Managing Trustee), 2012 DGLS(SC) 310*, wherein it was held that,

“While considering the provisions of Order VII Rule 11 of the C.P.C., the duty of the Trial Court is to ensure that, if on a meaningful, and not formal, reading of the plaint, if it is found that the plaint is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise its powers under Order VII Rule 11 of C.P.C., taking care to see that the ground mentioned therein is fulfilled.”

5. It was further held that,

“If clever drafting has created an illusion of a cause of action, it is necessary to nip it in the bud at the first hearing by examining the parties searchingly under Order X of C.P.C.”

6. As regards the 'Cause of Action' in paragraph No.8 of the Judgment, it was held that,

“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.”

7. Here in the case, it is submitted that, as in respect of the suit property described in paragraph No.1(B) of the plaint, it is not stated that when the said property was leased out to the Applicants, the material fact constituting the 'cause of action' being not pleaded, the plaint was required to be rejected.

8. However, in the considered opinion of this Court, the material fact

constituting the 'cause of action' for filing of a Suit for eviction and for arrears of rent is, the termination of the tenancy or the lease. Here in the case, in paragraph No.11 of the plaint, it is categorically stated that, the 'cause of action' arose on 1st May 2013, when the Respondents have, by issuing a notice dated 1st April 2013, terminated the lease of the Applicants. Therefore, the plain reading of the plaint is more than sufficient to show that the cause of action is pleaded and such cause of action cannot be called as illusory, merely because the date from when the lease of the Applicants commenced in respect of the said property, described in paragraph No.3 of the plaint, is not mentioned in the plaint. It is pertinent to note that, the Suit is not only in respect of the property described in paragraph No.1(B), but also in respect of the property described in paragraph No.1(C). As regards the said property, it is categorically mentioned that, it was leased out to the Applicants in the year 2000. In respect of both the properties, the amount of lease is also mentioned. There are further details in the plaint as to since when the Applicants failed to pay the amount of lease in respect of both the properties and how the amount claimed in the Suit, towards arrears of rent, is arrived at. Therefore, on the plain reading of the plaint, it can be clearly said that the cause of action or the facts, which constitute the cause of action, are clearly pleaded and hence, there was no reason to reject the plaint on this ground.

9. As regards the second contention that the Suit is barred under Section 149 of the Maharashtra Regional and Town Planning Act, 1966, the Trial Court has categorically observed that, the Respondents have not challenged the 'reservation' of the suit property under the M.R.T.P. Act and as, according to the Respondents, though the proposed reservation has been done by the Municipal Council, Karad, that reservation was not implemented and, therefore, the rights of the Respondents remained in tact. Considering the said aspect, on this count also, the plaint cannot be rejected as such, under Order VII Rule 11(d) of the C.P.C.

10. The impugned order passed by the Trial Court, being just, legal and correct, no interference is warranted therein. Civil Revision Application, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]