

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

CIVIL REVISION APPLICATION NO.6 OF 2019

SANJAY VISHWANATH SARODE AND OTHERS
VERSUS
RAMESH BHANUDAS SARODE AND OTHERS

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Advocate for Petitioners : Mr. Patni Pramod F.

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CORAM : V.K. JADHAV, J.
Dated : November 26, 2019

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PER COURT :-

1. Heard the learned counsel for the applicants/original defendant nos. 1, 2 and 10. The applicants have filed applications Exh.26 and 40 in Regular Civil Suit No.1284 of 2012 instituted by the respondents/plaintiffs for partition and separate possession of the suit property, under Order 7 Rule 11 of the Civil Procedure code. The said applications were resisted by the respondents/plaintiffs. The learned 5th Joint Civil Judge, J.D. Aurangabad by impugned common order dated 4.7.2018 below exh.26 and 40 rejected both the applications. Hence, this civil revision application.

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2. Learned counsel for the applicants submits that even on the bare reading of the plaint, it appears that the plaint does not disclose a clear right to sue. Learned counsel submits that the Court can look into the documents annexed with the written statement and admitted by the other side (plaintiffs) for the purpose of deciding an application under Order 7 Rule 11 of the Civil Procedure Code. Learned counsel submits that it is case of the petitioners that the partition of the suit property had already effected and that the respondents/ plaintiffs have not included all the joint family properties. Learned counsel submits that on the earlier occasion, the petitioners/original defendant no. 10 had filed an application Exh.26 under Order 7 Rule 11 of the Civil Procedure and it was disposed off by the Trial Court by directing that the same would be decided alongwith the suit. The applicant/defendant no.10 had challenged the said order before this Court by filing Civil Revision Application no.2 of 2017. This Court (Coram : N.W. Sambre,J.) by order dated 19.6.2017 in Civil Revision Application No.2 of 2017 quashed and set aside

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the order passed by the Trial Court below Exh.26 and further directed the Trial Court to hear the application Exh.26 afresh after considering the documents which the present applicant undertake to tender. Learned counsel submits that, in the backdrop of this order, it was incumbent upon the Trial Court to consider the documents placed on record by the applicants/defendants while disposing off the application Exh.26. However, the Trial Court has again rejected the application Exh.26 alongwith application Exh.40.

3. Learned counsel in order to substantiate his contentions placed reliance on a judgment in case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by L.Rs.** reported in **AIR 2019 Supreme Court 1430.**

4. It is well settled that while deciding an application filed under Order 7 Rule 11 of the Civil Procedure, the averments made in the plaint are

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required to be considered and if it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the powers under Order 7 Rule 11 of the Civil Procedure Code are required to be exercised. It is well settled that the Court can look into the averments made in the plaint and the documents annexed with the plaint. The Court cannot look into the averments made in the written statement so also the documents placed on record alongwith the written statement. In a case **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by L.Rs.** reported in **AIR 2019 Supreme Court 1430** (supra) in paragraph nos. 6.6 and 6.7 the Supreme Court has made following observations :-

“6.6. In the case of Sopan Sukhdeo Sable (AIR 2004 SC 1801) (supra) in paras 11 and 12, this Court has observed as under :-

“11. [In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal](#) [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. 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](#) (supra).”

6.7 In the case of Madanuri Sri Rama Chandra Murthy (AIR 2017 SC 2653, Para 8) (supra), this Court has observed and held as under :-

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint.

Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has

created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

5. In the light of the ratio laid down by the Supreme Court the averments made in the written statement so also the documents annexed to the written statement cannot be looked into while deciding the application filed under Order 7 Rule 11 of the Civil Procedure Code. If it is held that the Court can look into the documents annexed to written statement while deciding an application under Order 7 Rule 11 of the Civil Procedure Code, said amounting to consider the averments made in the written statement and, as such contrary to the ratio laid down by the Supreme Court in the aforesaid case. In view of this, I find no fault in the order passed by the Court below. There is no substance in this Civil Revision Application. Civil Revision Application is hereby dismissed.

(V.K. JADHAV, J.)

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