IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.99 OF 2019

Shri Godfrey Xavier Carcio Menezes & Anr. ... Appellants

Versus

Smt. Bela Vinni Menezes & Ors. ... Respondents

Shri A.D. Bhobe, Advocate for the Appellants.
Shri V.K. Daniel, Advocate for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 11th March 2020

ORAL ORDER:

Introduction:

In a suit for declaration and consequential relief of revenue-entry correction, the question is, does a wrong revenue entry per se give a cause of action to the plaintiff?

Facts:

2. The appellants filed Special Civil Suit No.47/2018 before the Third Additional Civil Judge, Senior Division, Margao, against eight defendants, actually from the same family. In that suit, the plaintiffs sought the following reliefs:

(a) To declare that the plaintiffs are the "owners in occupation, possession and enjoyment of the suit property";
(b) "to direct the Mamlatdar of Salcete to delete erroneous names recorded in occupant column".

3. Later, the defendants filed their written statement. Simultaneously, they also applied under Order 7 Rule 11 of the CPC;

they wanted the trial Court to reject the plaint.

4. In the application under Order 7 Rule 11 CPC, the defendants contended that the suit is barred by limitation and also suffers for want of cause of action.

5. On the merits, the trial Court rejected the defendants' contention on limitation. But it accepted their contention on the lack of cause of action. Thus, through the impugned judgment, it rejected the plaint. Aggrieved, the plaintiffs have come before this Court in this First Appeal.

Submissions:

6. Shri Bhobe has submitted that the plaint clearly reveals the cause of action. Despite that, the trial Court has misunderstood the ratio of *Shri Vidhyadhar Atmaram Umarye @ Venkatesh Atmaram Umarye v. The Chief Secretary, Government of Goa*[1] and held that a mere wrong revenue entry does not provide cause of action for a person to approach the court.

7. On the other hand, Shri Daniel has contended that the plaint does not whisper anywhere in what manner the alleged revenue entry has given cause of action to the appellant. According to him the plaint is silent on that count.

8. Heard Shri A.D. Bhobe, the learned counsel for the appellants; and Shri V.K. Daniel, the learned counsel for the respondents.

1 2014 (4) ALL MR 734

Discussion:

9. It requires no reiteration that the rejection of plaint under Order 7 Rule 11 CPC depends on the plaint averments and the plaint averments alone. So it suffices if we refer to a couple of paragraphs from the plaint. Paragraphs 8, 13, and 14 of the plaint read thus:

> 8. The plaintiffs submit that though plaintiffs are lawful owners of the suit property, defendant no.1 late husband's name is figuring in Form I & XIV and the plaintiffs have acquired knowledge about the said erroneous entry in Form I & XIV, when the plaintiff no.1 had obtained Form I & XIV, dated 02.02.2018.
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> 13. The plaintiffs submit that the defendants have no right of whatsoever nature of the remaining area admeasuring 11747 square metres.
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> 14. The plaintiffs submit that since the plaintiffs are owners of the suit property and erroneous entry of late Shri Caetano Felix Sivano Menezes recorded in occupant column to be deleted in property plot bearing survey no.109/2 of village Sarzora, Taluka Salcete Goa.

10. Finally, we may refer to para 17 which sets out the cause of action, and it reads:

> 17. The plaintiffs submit the cause of action to file the present suit arose on 02.02.2018 when the plaintiffs had obtained the certified copy of Form I & XIV dated 02.02.2018 and since then it continues.

11. I reckon the plaintiffs have asserted that they are the owners. They have also denied that the defendants have any manner of right or interest in the property. Finally, they have pleaded that on 02.02.2018 they secured certified copies of the revenue records and came to know that the name of the first defendant's husband was recorded as the owner or occupier of the property. Thus, they have felt that this entry may cause prejudice to their interest. So they

wanted correction of that entry; it is, it seems, to dislodge any presumption as to the title based on a revenue entry. Perhaps as a matter of abundant caution, they also wanted the trial Court to declare that they are the owners.

12. Here, I may note two things. To some extent, the legal profession, at least in the jurisdictional bounds of the High Court of Bombay, suffers from one misplaced notion: the pleadings should be elaborate as if they were written arguments. They need not be; rather, they ought not to be. Order 6, Rule 2 (1) is unequivocal in its statutory assertion that the plaint should contain facts and material facts alone:

> 2. Pleading to state material facts and not evidence.—(*1*) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

13. Whenever any particular claim is made, it must be based on particular facts of the prescribed type—prescribed as to rights and duties defined by statutes or by judicial legislation. Such facts are therefore the facts material to the claim, for they are the facts which must be proved (*facta probanda*) in order to establish the claim. The facts which are material in this sense must therefore be ascertained by reference to the particular claim which is made in the action, and the issues raised thereon, as well as by reference to the general propositions of the law; and they must be distinguished from facts

which are merely relevant to the proof (*facta probantia*)[2]

14. This is briefly stated in the following terms in the First Report of the Judicature Commissioners, which was published in 1869[3].

> "The systems of pleading now in use, both at common law and in equity, appear to us to be open to serious objections. Common law pleadings are apt to be mixed averments of law and fact, varied and multiplied in form, and leading to a great number of useless issues, while the facts which lie behind them are seldom clearly discoverable. Equity pleadings, on the other hand, commonly take the form of a prolix narrative of the facts relied on by-the party, with copies of extracts of deeds, correspondence, or other documents, and other particulars of evidence, set forth at needless length. The best system would be one which combined the comparative brevity of the simpler forms of common law pleading with the principle of stating, intelligibly and not technically, the substance of the facts relied upon as constituting the plaintiff's or defendant's case, as distinguished from his evidence. It is upon this principle that modem improvements of pleading have been founded, both in the United States and in our own colonies and Indian possessions, and in the practice recently settled for the Courts of Probate and Divorce. We recommend that a short statement, constructed on this principle, of the facts constituting the plaintiff's complaint, not on oath, to be called the Declaration, should be delivered to the defendant. Thereupon the defendant should deliver to the plaintiff a short statement, not on oath, of the facts constituting the defence, to be called the Answer. When new facts are alleged in the Answer, the plaintiff should be at liberty to reply."

15. In an elaborate dissertation, H. C. Dowdall, after discussing the pleadings both under the English and the American Law, concludes:

> 1. Material facts are particular facts corresponding with the type prescribed in general terms by the law as essential to the existence or extent of any legal right or duty.

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2 Pleading "Material Facts" by H. C. Dowdall, University of Pennsylvania Law Review, VOL. 77 June, 1929, No. 8,

3 Id.

> 2. The material facts of a case are the facts relied on as material and advanced in support of a claim submitted for judicial determination.
> 3. Relevant (or probative) facts, i. e., "evidence" as that word is used in the pleading rule, are facts which, according to the law of evidence, are relevant to the proof of the material facts of a case, and to which testimony may be directed in the same way as to the material facts[4].

16. In *Madiraju Venkataramana Raju v. Peddireddygari Ramachandra Reddy*[5], the Supreme Court has examined, among other things, the sweep of the terms "material facts" and "cause of action", though, in reference to an election petition. It has, in that contest, examined the interplay between Sections 81, 83, 100 and 101 of the Representation of People Act 1951. From a host of precedents *Madiraju Venkataramana Raju* has culled out the proposition that material facts or *facta probanda* are those basic, elementary, and prime facts which the petitioner shall plead and which, if not traversed, allow the Court to rule in the petitioner's favour. Material facts, it further notes, are the entire bundle of facts which constitute a complete cause of action for the petitioner and total defence for the respondent.

17. *Harkirat Singh v. Amrinder Singh*,[6] the Supreme Court has held that expression "material facts" has been defined neither in the Act nor in the Code. It has sourced the synonyms for "material" from Burton's Legal Thesaurus[7] and listed them out: fundamental, vital,

4 Id.

5 (2018) 14 SCC 1

6 JT 2005 (10) SC 513

7 (3rd Edn.), p. 349.

basic, cardinal, central, crucial, decisive, essential, pivotal, indispensable, elementary, or primary. The phrase "material facts", therefore, may mean those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down.

18. *Harkirat Singh* has, then, drawn a distinction between "material facts" and "particulars". "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn to make it fuller, clearer and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.[8]

19. According to the learned author C. K. Thakker,[9] the law of pleadings may be tersely stated in four word: "Plead facts not law." But legal consequences which flow from facts need not be stated in the pleading. It is the duty of the party to set out facts and not

8 As quoted in *Madiraju Venkataramana Raju*

9 Code of Civil Procedure 1908 Vol 3, p.896

inferences to be drawn from such facts. Inferences of law to be drawn from pleaded facts need not be stated in the pleading. The practice of courts is to consider and deal with the legal result of pleaded facts, although the particular result is not stated in the pleading. A judge is bound to apply correct law even if incorrect law is pleaded by a party. A mixed question of fact and law, however, should be specifically pleaded. Again, where a party raises a point of law, which is required to be substantiated by facts, the party raising the point must state necessary facts in support of the point of law.[10]

20. The evidence of the facts, as distinguished from the facts themselves, need not be pleaded. To explain this finer distinction, the learned author stresses that the facts are of two types: (a) *Facta probanda*—the facts required to be proved (material facts); and (b) *Facta probantia*—the facts by means of which they are to be proved (particulars or evidence). The pleading should contain only *facta probanda* and not *facta probantia*. The material facts on which the plaintiff relies for his claim or the defendant relies for his defence are called *facta probanda*, and they must be stated in the plaint or in the written statement, as the case may be. But the facts or evidence by means of which the material facts are to be proved are called *facta probantia* and need not be stated in the pleadings. They are not the fact in issue, but only relevant facts required to be proved at the trial

10 Id.

in order to establish the fact in issue.[11]

21. We can put the issue in perspective with a couple of illustrations. In an eviction suit, if the tenant pleads, “I have paid the rent regularly,” that amounts to pleading a material fact; how he has paid—say by cash or cheque—where he has paid, when he has paid, to whom he has paid, and so on are the material particulars. They are the collateral facts being evidentiary. Similarly, a person was insured with an insurance company, but death by suicide was excluded from the coverage. On the death of the insured, if the insurer pleads, “The insured committed suicide,” is *facta probanda* (a material fact). That the insured had been depressed, that he bought a pistol, shot himself with that weapon, and that he left a letter addressed to his wife—all these are *facta probantia* (evidentiary facts) and they need not be pleaded; they need to be proved though.[12] Similarly, in an election petition, the plea that cars were used by the successful candidate for the purpose of conveying voters contrary to the Act must be stated in the pleadings, for it is a fact in issue (facta probanda). But the fact as to from where the cars were obtained, who hired them and used them for conveyance of voters are merely evidentiary facts (facta probantia) and need not be stated in the pleadings.

22. Tested on the anvil of the standards set above, we may gather from paragraphs 8, 13, and 14 of the plaint that the plaintiffs

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11 Id. P.910

12 Based on the facts of Barrodaile v. Hunder, (1845) 5 Man & Gr 639, as culled out in C. K. Thakker’s Code of Civil Procedure, Vol.3, p.911

are the owners of the suit property, that the name of the first defendant's late husband is shown in the revenue records, that it is an erroneous entry, that the defendants have no right of whatsoever nature over the property, that the erroneous entry in the occupant column must be deleted because the plaintiffs are the true owners. I reckon the plaintiffs have pleaded, as required under Order 6, Rule 2(1) of the CPC, only the material facts; they should not be crucified for not pleading the material particulars or the evidentiary aspects of their claim.

23. Now let us examine the decision the trial Court has relied on to reject the plaint. In *Shri Vidhyadhar Atmaram Umarye*, the appellant filed a suit for declaration and injunction. But the trial Court dismissed the suit. On appeal, this Court addressed two aspects. The first is about the presumption of correctness the revenue entries enjoy. On that count, this Court has accepted that the property stands recorded in the occupant's column of the Record of Rights in the Government's name. In that context, the Court notes that entries in the survey records do not confer any title in favour of the person whose name figures in the records. In any event, the presumption of possession under Section 105 of the Land Revenue Code, on the facts, stands rebutted because of the categorical admission of DW.1 that the Government is not in possession of the said property.

24. *Shri Vidhyadhar Atmaram Umarye*, then, has dealt with the

second issue. That issue is, does the limitation commence on the date the revenue entries stand mutated? To answer this, the Court has accepted the appellants' contention that the suit is not barred by law of limitation. "Merely because a name of a particular person figures in the survey records, by itself does not give any cause of action to a party to file a suit for declaration of title." To support this proposition, the Court has relied on the Supreme Court's *Daya Singh v. Gurudev Singh*[13].

25. First, revenue records do not disturb anybody's title to the property; they are primarily meant to serve the revenue purpose. At best, they enjoy a rebuttable presumption on the possessory aspect. The person shown in the occupier's column enjoys a presumption that he has been in possession of the property. But this presumption stands circumscribed by other limitations: for example, the entry must have been legitimate. That is, the mutation must be with due notice to the previous occupier whose name now stands replaced. And this presumption is weak because possessory column in the revenue records is to serve only the collateral purpose of revenue collection or of statistical compilation. So it is easily rebuttable, too.

26. *Shri Vidhyadhar Atmaram Umarye* implies that merely because the revenue entries reflect somebody else's name does not compel the true owner to rush to the court seeking a declaration of title for that entry never calls into question the true owner's title. In

13 (2010) 2 S.C.C. 194

that sense, the Court has held that the revenue entries do not provide cause of action.

27. In *Daya Singh* the appellants were the owners; they possessed the property jointly with two other individuals. These two individuals, first, mortgaged their share and, later, sold it to the respondents. In 1965, the respondents got their names mutated in the relevant record of rights as owners of the area they had purchased. Then, the appellants filed a pre-emption suit. The trial court decreed it. The respondents appealed, but the District Court dismissed the first appeal. Aggrieved, they filed a second appeal. After its dismissal in 1972, the parties compromised. According to this compromise, the appellants were entitled to retain half of the 2/3rd share and the respondents were to retain the other half. When this compromise was presented before the Division Bench of the High Court, it disposed of the Letters Patent Appeal in terms of the compromise. The revenue records, too, were mutated. After the compromise, because of the later developments, the appellants filed a suit for declaration.

28. In the suit, the appellants pleaded that the cause of action for the suit first arose in 1972, when the parties compromised their dispute, then in 1976, when the plaintiffs were delivered possession of 1/3 share of land, and "now about a week back when the plaintiffs have for the first time come to know about the wrong entries in the revenue records and now when the defendants have refused to admit

the claim of the plaintiffs." The respondents entered appearance and filed written statement; they pleaded limitation, too. The suit and the first appeal both were dismissed. In the second appeal, the High Court refused to interfere.

29. The question before the Supreme Court was whether the mere existence of an adverse entry in the revenue records had given rise to cause of action as contemplated under Article 58 of the Limitation Act or it had accrued when the right was infringed or threatened to be infringed. In this context, the Supreme Court has examined the pleadings in the suit. It has noted that the appellants have in fact pleaded that "the right to sue accrued when such right was infringed by the defendants about a week back when the plaintiffs had for the first time come to know about the wrong entries in the record of rights and when the defendants had refused to admit the claim of the plaintiffs."

30. According to the Supreme Court, "the question of filing the suit before the right accrued to [the appellants] by compromise could not arise until and unless infringement of that right was noticed by one of the parties." Thus, what matters in the date of knowledge about the wrong entry in the revenue records rather than the date when that wrong entry was made. Only in this context has the Supreme Court and this High Court, too, have held that a revenue entry does not provide the cause of action. It does not, I reckon, trigger the limitation, a facet of cause of action.

31. To conclude, I hold that a wrong revenue entry per se does not provide cause of action to a person, but the knowledge about it does. If apprehends that the alleged wrong entry may cast a shadow on his title or affects his right to enjoy the property, he has the cause of action. That is, the averment about the wrong entry and its potential to cast shadow on the plaintiff's title or enjoyment will provide the cause of action. But the limitation to sue will start only from the date of knowledge about the wrong entry, rather than the date of the actual revenue entry.

32. Under these circumstances, I hold that the trial Court has misdirected himself in holding that the plaint suffered for want of cause of action.

33. I, therefore, set aside the impugned judgment and hold that the plaint does reveal cause of action. As a result, the trial Court will take the suit on file and proceed with the matter.

No order on costs.

DAMA SESHADRI NAIDU, J.

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