

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL REVISION APPLICATION NO. 139 OF 2021**

1. M/s.Mutha Industries, A Partnership Firm.
2. Mr.Sanjay Kachardas Mutha
3. Siddharth Sanjay Mutha .. Applicants

Versus

1. Mrs.Meena Milind Bhansali
2. Late Laxmibai Piraji Dangmali thru LR.
3. Mr.Pramod Nivrutti Dangmali
4. Mrs.Sunita Surendra Dangmali
5. Smt.Subhadrabai Baban Satav
6. Mr.Ramesh Baban Satav
7. Mrs.Shaila Arun Bhumkar
8. Smt.Rajkumari Kailas Satav
9. Mr.Atish Kailas Satav
10. Mr.Akash Kailas Satav
11. Smt.Anjana Baban Satav
12. Mr.Chandrakant Baban Satav
13. Mr.Tukaram Laxman Satav
14. Sanjay Kachardas Mutha
15. Rajiv Kachardas Mutha
16. Smt.Kalpana Kachardas Mutha .. Respondents

...

Mr. Siresh Sharma with Vijay Upadhyay and Asha Kanzariya for the applicants.

Mr. Uday Warunjikar with Vaishnavi Gujarathi i/b Sumit S. Kate for respondent no.1.

**CORAM: BHARATI DANGRE, J.**

**DATED : 13<sup>th</sup> OCTOBER, 2021**

**ORAL JUDGMENT:-**

1           The applicant no.1 is a partnership firm which was originally formed by Partnership Deed dated 27<sup>th</sup> March 1986 with four partners i.e. (1) Late Kachardas Nensukh Mutha (2) Sanjay Kachardas Mutha, (3) Rajeev Kachardas Mutha and (4) Late Laxmibai Piraji Dangmali, who retired as a partner w.e.f. 30<sup>th</sup> March 1987. Further, the third partner Rajeev Mutha also retired as a partner w.e.f. 31<sup>st</sup> March 2020. With effect from 15<sup>th</sup> September 2017, Siddharth Sanjay Mutha joined as a partner by a Partnership-cum-admission deed dated 13<sup>th</sup> September 2017. After demise of late Kachardas Nensukh Mutha on 13<sup>th</sup> August 2018, a Partnership-cum-Death deed was executed on 25<sup>th</sup> November 2018 and the partnership was again re-constituted into a 'Reconstituted firm', and the shares of the existing partners were re-determined by the said deed executed on 20<sup>th</sup> November 2018. One of the partner of the reconstituted deed, being Siddharth Kachardas Mutha applied for probate of the registered Will dated 20<sup>th</sup> May 2015 executed by Late Kachardas Nensukh Mutha by filing Miscellaneous Application No.1078 of 2019 and it has been challenged by Mrs.Meena Milind Bhansali @ Ms.Bhagyashree Kachardas Mutha, the daughter of Late Kachardas.

2            Mrs.Meena Milind Bhansali to whom a reference is made in the earlier paragraph filed a Regular Civil Suit No.11 of 2020 against M/s.Mutha Industries, the Registered Partnership Firm and impleaded partners of the said partnership firm Mr.Sanjay Mutha and Siddharth Sanjay Mutha as defendant nos.2 and 3. Late Laxmibai Dangmali is impleaded as defendant no.4. Apart from this, the defendant nos.6 to 18, members of Satav family and Mutha family are impleaded as defendants. In the said Suit, the following reliefs are sought.

- (a) *Suit of the Plaintiff may kindly be decreed with cost;*
- (b) *It be declared that the Partnership Cum Death Deed dated 25/11/2018 executed by Defendant Nos.2 and 13 is illegal, null and void and not binding on the Plaintiff;*
- (c) *The Defendant Nos.2 and 3 be directed to add the Plaintiff and the Defendant Nos.16 to 18 as partners in the Defendant No.1 firm in place of Late Kachardas Nensukh Mutha;*
- (d) *The Compromise Decree dated 18/03/2019 passed in SCS No. 4508/2012 may kindly be set aside and SCS No. 4508/2012 may kindly be restored;*
- (e) *Any other just and equitable order may kindly be passed in favour of the Plaintiff as the Hon'ble Court may deem fit and proper in the interest of justice;*

3           In paragraph no.1 of the said Suit, the plaintiff enlisted the suit properties which include final plot no.34, 37, 39, 52 and 16 located at village Hadapsar, Taluka Haveli, District Pune and it is pleaded that the suit properties along with several other properties were allegedly owned by defendant no.4 Laxmibai Dangmali and defendant nos.5 to 15 jointly by inheritance and while defendant no.4 was alive, she sold the suit properties to defendant no.1, M/s.Mutha Industries vide sale deed dated 9<sup>th</sup> March 1987 and sale deed dated 29<sup>th</sup> September 1987. It is pleaded that the defendant nos.5 to 15 were demanding 50% undivided share in the suit properties and therefore, M/s.Mutha Industries had filed a suit against defendant nos.5 to 15 being RCS No.814 of 1995, subsequently re-numbered as SCS No.4508 of 2012.

4           It is pleaded that the plaintiff and defendant nos.16 to 18 are the legal heirs of Late Kachardas Mutha and are entitled to his properties, since his wife Padmaja Mutha also expired. The plaintiff state that the defendant nos.2 and 3 are in control of the defendant no.1, illegally without any authority and on demise of late Kachardas Mutha, the plaintiff and the defendant nos.16 to 18 ought to have been indicted as partners but illegally defendant nos.2 and 3 took control of the partnership firm and illegally entered into a compromise with defendant nos.5 to 15 and have parted with suit property (d) and (e) and deprived the plaintiff

and the defendant nos.16 to 18 from enjoying the fruits of inheritance.

The cause of action is pleaded in para 8 of the plaint where it is stated that it arose on 25<sup>th</sup> November 2018 when the partnership-cum-death deed was executed. It is alleged to have further arisen on 18<sup>th</sup> March 2019 when compromise decree in SCS no.4508/12 was obtained. In the backdrop of the aforesaid pleadings, the relief as mentioned above has been sought.

5 In the said Suit, the defendants (the Applicants herein) moved an application Order 7 Rule 11 (a) and (d) of the CPC, praying for the following reliefs :-

- (a) The present application may kindly be allowed.
- (b) The Plaint as well as Application filed by the Plaintiff below Exh.5 may kindly be dismissed as being barred under law and also declaring that no cause of action exists in favour of the Plaintiff, by imposing minimum cost of a sum of Rs.50,000/- (Rupees Fifty Thousand only) on the plaintiff.
- (c) Necessary inquiry with respect to valuation of present Suit for purposes of determining appropriate court fees payable by the Plaintiff be conducted.
- (d) Any such further orders as this Hon'ble Court shall deem fit in the interest of justice and equity may kindly be passed

6           The application was premised on the ground that the plaintiff was neither a partner nor in any way, concerned with the firm M/s.Mutha Industries and even she was not party to the Special Civil Suit No.4508 of 2012. It was specifically pleaded that the suit being filed by the plaintiff is unknown, to the well recognized principle of law and such suit being filed by the plaintiff is not permitted, being a complete stranger with no *locus standi* or any cause of action for bringing the suit. It was asserted that the Suit is barred in terms of Section 34 of the Specific Relief Act, 1963 and also in terms of Order 23 Rule 3A of the Code of Civil Procedure. Further, the present Suit was also alleged to be barred under law as the plaintiff is claiming right in respect of the partnership share/interest of Late Kachardas, held by him in the defendant no.1 firm. The said claim was alleged to be in violation of the relevant provisions of the Indian Partnership Act, 1932 and to the partnership deed produced on record by the plaintiff. It was also alleged that late Kachardas Mutha had left behind him a registered last Will and Testament dated 20<sup>th</sup> May 2015 and by the said document, he had bequeathed and transferred all entitlements of the said firm, M/s.Mutha Industries specifically unto and in favour of defendant no.3 i.e. M/s.Siddharth Sanjay Mutha and the plaintiff was specifically disinherited from the said last Will and Testament. The rejection of the plaint was also sought on the ground that the Suit is an incidence of clever, sham and illusory drafting for creating a non-existent and false cause of

action, which as per the averments of the plaintiff and the documents relied upon, is non-existent and cannot, by any stretch of imagination, be agitated or raised by the plaintiff.

The impugned order passed on the said application by the Joint Civil Judge, Sr. Division, Pune on 21<sup>st</sup> December 2020 is the subject matter of the Revision Application, as the learned Judge rejected the same and refused the relief of rejection of the plaint, as prayed for.

7           The learned Judge did not accept the contention of the defendants that there is no cause of action disclosed in the plaint or that the Suit from the statement in the plaint is barred by any law and did not consider it deemed expedient to reject the relief, on the ground that the Suit is undervalued and that the plaint is insufficiently stamped. After making a reference to the various authorities cited before him, the learned Judge has rejected the claim set out by the defendants for dismissal of the plaint on the bar that has been invoked under Section 34 of the Specific Relief Act and also the provisions of the Partnership Act. Recording that the plaintiff is the daughter of Late Kachardas Mutha and the defendant no.2 is her brother, the Court recorded that the father of the plaintiff had a dispute regarding suit properties with the original land owners in SCS No.4508/12 and during the pendency of the Suit, Kachardas Mutha expired and the defendant no.2 exclusively represented him without the

plaintiff being impleaded in the said suit as his legal representative.

It is further recorded that the Suit was compromised between the defendant no.2 and the original land owners and the plaintiff is aggrieved by the compromise deed. The learned Judge also record in the impugned order, that though the plaintiff was not party to the suit, she is claiming her right from her father's share, which was compromised by defendant no.2. The learned Judge held that the plaintiff is also posing a challenge to the Partnership-cum-death deed dated 25<sup>th</sup> November 2018 in the suit and according to her, share of her father in the defendant no.1 firm is illegally transferred in favour of defendant no.3, depriving her of the rights as his legal heir. The impugned order record that the prayer clause (b) of the plaint is *prima facie* maintainable under Section 34 of the Specific Relief Act and the plaintiff being aggrieved by denial of her right by the defendants, is seeking relief that the partnership deed be declared as illegal, null and void and do not bind the plaintiff. The Court also did not accept the contention in respect of under valuation and insufficiency of Court Fees as alleged by the defendants. Recording that though prayer clause (d) of the Suit cannot be granted, since the prayer clause (b) is perfectly maintainable and the plaint cannot be rejected in piecemeal and has to be rejected as a whole, the application is dismissed by concluding that the Suit is filed on a cause of action and it is properly valued and the proper Court fee

being paid, apart from this, there is no bar under the Specific Relief Act to try the said Suit. It is this order which is assailed in the present Civil revision Application.

8            Learned Advocate Siresh Sharma appearing for the applicant would strenuously submit that the impugned order do not justify its existence and it is submitted that the learned Judge has failed to take into consideration the bar which would make the Suit not maintainable. It is submitted that the Suit has failed to disclose the cause of action, apart from the fact that it is defective, grossly undervalued and being barred under law, it ought to have been rejected by taking recourse to Order Rule 11(a) and (d) of the Code of Civil Procedure. According to the learned counsel, the Court has failed to take into account the provisions of Section 34 of the Specific Relief Act, 1963 and the plaintiff under the guise of a fresh Suit, is attempting to seek relief in respect of setting aside of the compromise decree dated 18<sup>th</sup> March 2019 passed in the Special Civil Suit, with which she was not even remotely concerned with and therefore, it is strictly barred in terms of Order 23 Rule 3A of the Code.

Further, it is submitted that to maintain the present suit with respect to the partnership interest of Late Kachardas Mutha, the probate proceedings in terms of the registered last Will and testament of Late Kachardas Mutha is pending before the Civil Court. It is further argued that present Suit in respect of

partnership share of late Kachardas Mutha in the firm, M/s.Mutha Industries cannot be claimed, as partnership is an act of contract between the parties and it cannot be devolved upon the legal heirs and the argument is, as the partnership interest of Late Kachardas Mutha on account of his demise has elapsed, the legal heirs claiming through him are only entitled to receive sums standing to the credit of capital and current account of Late Kachardas Mutha in the firm and by no stretch of imagination it would entitle the plaintiff to be inducted as a partner in the firm.

9            Learned counsel would further submit that the said entitlements of the legal heirs are also disposed off vide Registered last Will and Testament of late Kachardas Mutha, which has come to the sole and exclusive entitlement of the defendant no.3 Siddharth Sanjay Mutha and therefore, a Suit filed by the plaintiff claiming interest in the partnership, in absence of any privity of contract and any existing legal right is barred in terms of Section 34 of Specific Relief Act and the provisions of Indian Partnership Act, 1932. The prayer (b) as prayed in the Suit is therefore, not maintainable is the submission.

10           The submission advanced on behalf of the applicants through the learned counsel, is to the effect that since no relief can be granted to the plaintiff even after a full fledged trial, merely dragging the suit through a rigmarole of trial by a clever

and illusory drafting by creation of a false and non-existent cause of action must be nipped in the bud. As regards the bar raised in terms of Order 23 Rule 32 of CPC, learned counsel relied upon a decision of the Apex Court in case of Triloki Nath Singh Vs. Anirudh Singh AIR 2020 SC 2111, wherein emphasis is laid on the finality of decisions of all adjudicating forums and the underlying principles of Order 23 Rule 3A has been highlighted being to the effect, that no Suit shall lie to set aside a decree on the ground that the compromise on which the decree is passed was not lawful.

Learned counsel has also placed reliance on the decision of the Apex Court in case of Dahiben Vs. Arvindbhai Kalyanji Bhanushali (D) thru LRs and Ors. (Civil Appeal No.9519/2019 arising out of SLP (Civil) No. 11618/2017) wherein the Apex Court has reiterated the principles underlying Order 7 Rule 11(d) of the Code of Civil Procedure and the principle which has been reiterated, is to the effect that when a Suit filed by the plaintiff is vexatious, meritless and does not disclose a right to sue, the Court shall exercise the power under Order 7 Rule 11 of the CPC.

11 Per contra, learned counsel Mr. Warunjikar would submit that it cannot be said that there is no cause of action set out in the plaint and in fact, para-8 of the plaint, the cause of action has been specifically pleaded. Mr. Warunjikar would submit

that in the present case, there is no bar which is attracted and he would traverse the submission of the learned counsel for the applicant that Section 5, 37 and 42 of the Partnership Act operate as a bar and his submission is, the Suit is maintainable. About the invocation of bar under Order 23 Rule 3A of the CPC, the submission of Mr.Warunjikar is that the plaintiff never claimed that the consent terms were unlawful and he rely upon a decision of Karnataka High Court in case of Karnataka High Court in case of Siddalingeshwar & Ors Vs. Virupaxgodua and ors, ILR 2003 KAR: 2559. Apart from this, the submission of Mr.Warunjikar is that out of three prayers, even if one prayer is not maintainable, then in that eventuality, the Suit as a whole should be rejected and there cannot be piecemeal rejection of plaint. He fall back on the decision of Apex Court in case of Sejal Glass Limited Vs. Navilan Merchants Pvt.Ltd, 2018 11 SCC 718 and on the decision of Sopan Sukhdeo Sable and ors Vs. Assistant Charity Commissioner and ors, 2004, 3 SCC 137.

He submit that after death of her father, on 18<sup>th</sup> March 2019, the applicants fraudulently entered into a compromise in the Civil Suit, which was filed by her father and the compromise was based on the Will of deceased Kachardas Mutha, though the probate application preferred by Siddharth qua the said Will is pending. Ultimately, what is argued by Mr.Warunjikar is the provisions of Order 7 Rule 11 will not disentitle him to prosecute the suit itself and he may have the

weakest case but that do not preclude him from instituting it and getting it tried, and in any case, scuttling of his civil remedy, would be against the spirit of law. Mr.Warunjikar would further assert and submit that the plaintiff may not be entitled to the full relief as sought in the plaint, but she cannot be denied the lesser relief and what is necessary at this stage, is to demonstrate some right in her, as a legal heir of late Kachardas Mutha. Further, arguing that the right of the plaintiff may be limited but she cannot be denied a right to institute a Suit and at this stage, she cannot be ousted through a short-cut of Order 7 Rule 11 of the CPC, the learned counsel seek rejection of this application.

12           The impugned order reveal that the rejection of the plaint was sought on three grounds with reference to the relief sought in the Suit filed by the plaintiff and the application for rejection of plaint invoke Order 7 Rule 11 (a) and (d) of the CPC.

          The rejection is thus sought on the ground of lack of cause of action in the plaint and on the ground that the Suit is barred by any law.

          The bar which is sought to be invoked is by virtue of Order 23 Rule 3A of the CPC, qua prayer clause (d), where the compromise decree dated 18<sup>th</sup> March 2019, in Special Civil Suit No.4508/12 is prayed to be set aside and as regards the prayer sought in the plaint as prayer clause (b), being to declare partnership-cum-death deed dated 25<sup>th</sup> November 2018 executed

by defendant nos.2 and 3 to be illegal, null and void and not binding on the plaintiff, the bar imposed under Section 37 and 42 of the Partnership Act, is pressed into service, whereas as regards prayer clause (c) in the plaint, seeking a direction to the defendant nos.2 and 3 to add the plaintiff and defendant nos.16 to 18 as partners in the defendant no.1 firm in place of Late Kachardas Mutha, Section 5 of the Partnership Act is sought to be invoked.

13           It would be appropriate to make reference to the relevant provision in the Code dealing with rejection of plaint in form of Order 7 Rule 11.

***11. Rejection of plaint.***— *The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of rule 9*

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.*

14 I shall now proceed to deal with the grounds set out in the application filed by the Applicants (the defendants to the Suit) justifying the rejection of plaint under different heads, one after another.

**(A) Bar to grant Relief under Section 34 of the Specific Relief Act.**

The counsel for the applicant has drawn my attention to the provisions of Section 34 of the Specific Relief Act, 1963 which confer a discretion on the Court when it gives any declaration of any status or right and this contemplate a person entitles to any legal character or to any right as to any property who can institute a Suit against any person denying or interested to deny, his title to such character or right and the Court in its discretion may grant a declaration that he is so entitled. The submission advanced is to the effect that before the plaintiff seek

any declaratory relief, he must establish his entitlement to such a right and in absence of securing satisfaction thereof, no declaratory relief can be granted.

The requisites for a declaratory Suit are well marked and in order to obtain a relief in form of a declaration, the plaintiff at the time of institution of a suit must be entitled to any legal character or any right to any property or the defendant has denied or is interested in denying the character or the title of the plaintiff. The Court upon existence of the aforesaid, can grant a declaration to the plaintiff to a legal character or to a right to property. Even in the wake of the existence of the aforesaid, Section 34 of the Specific Relief Act confer a discretion on the Court either to grant or not, a declaratory relief depending on the circumstances of each case.

When the aforesaid principle is applied to the facts in hand, it is manifest that, immediately upon demise of Late kachardas Mutha, the original defendant no.1, to the extent of his share stood dissolved and no rights continue and/or subsist in the defendant firm. Furthermore, the legal heirs of late kachardas Mutha are entitled to claim sums standing to the credit of capital and current account of Late Kachardas Mutha, as more particularly provided in clause 16 of the Partnership Deed and Section 42 r/w Section 37 of the Indian Partnership Act, 1932.

15           The decision in case of Supreme General Films Exchange Ltd Vs. Brijnath Singhji Deo of Maihar and ors, 1975 2 SCC 530, is relevant, where the following observations need a mention :-

“7.           Learned Counsel for the appellant company tried to persuade us to A hold that the plaintiff had neither a legal character nor any such present right in any property for which a declaration could be granted under Section 42 of the Specific Relief Act 1877 (re-enacted as Section 34 of the Specific Relief Act of 1963). Furthermore, he contended that the defendant-company had never denied any of the rights of the plaintiff. Finally, he submitted that, ill any case, no declaration at all was needed by the plaintiff if the lease of 1956, executed by the former owners of the theater in favour of the defendant-appellant, was void. 'these arguments rest on the assumption that no declaratory relief can be granted outside the ambit of Section 42 of the Specific Relief Act, 1877 which read as follows:

"42. Discretion of Court as to declarations of status or right.. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Bar to such declaration.. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief then a mere declaration of title, omits to do so.

In the backdrop of the aforesaid submission, the Apex Court held as under :-

*“16. We think that the circumstances in which a declaratory decree u/s.42 should be awarded is a matter of discretion depending upon the facts of each case. NO doubt, a complete stranger whose interest is not affected by another legal character or who has no interest in another’s property could not get a declaration u/s.42 of Specific Relief Act with reference to legal character or property involved”*

The suit filed by the plaintiff is thus without any entitlement in law, as she cannot be inducted as a Partner in the firm in the wake of the Partnership Deed which do not permit her induction merely on the contingency of death of her father Late Kachardas Mutha. The plaintiff has thus filed a Suit on a misconception of law, being entitled to be inducted as a partner on death of her father. She is not entitled for a legal character and therefore, the Court shall decline a declaratory relief in her favour in the wake of the bar enacted under Section 34 of the Specific Relief Act.

**B) Cause of Action**

16 Dealing with the first objection for not having any cause of action and for the plaint being liable to be rejected on the said count, it is to be noted that the Partnership Deed was originally executed on 27<sup>th</sup> March 1986 with four partners. One

of the partner Late Laxmibai Dangmali retired from the partnership firm w.e.f 30<sup>th</sup> March 1987 and another partner Rajeev Mutha retired from the partnership w.e.f 31<sup>st</sup> March 2010. A new partner was inducted, w.e.f 15<sup>th</sup> September 2017 being Siddharth Sanjay Mutha. On demise of Late Kachardas Mutha on 13<sup>th</sup> August 2018, the partnership came to be reconstituted, and on the basis of his Will, the shares of the existing partners were re-determined. It is this Partnership-cum-death deed dated 25<sup>th</sup> November 2018 which is sought to be declared as null and void by the plaintiff.

By the said deed, name of Mr.Kachardas Mutha is deleted from the deed of partnership on his demise and the partnership is reconstituted, re-determining the share of the existing partners being Sanjay Mutha and Siddharth Sanjay Mutha. The profit sharing of Siddharth Mutha is enhanced to 67%, in view of the registered Will dated 20<sup>th</sup> May 2015 executed by Kachardas Mutha assigning his share on his death in favour of Siddharth. In the plaint, the allegation of the plaintiff is to the effect that the partnership has been reconstituted to deprive the plaintiff of her legal entitlements and hence the claim in the Suit is that after declaring the partnership-cum-death deed as illegal and not binding on the plaintiff, she along with defendant nos.16 to 18 are entitled to be inducted as partners in M/s.Mutha Industries.

17           “Lack of cause of action” to the plaintiff is sought to be canvassed by the Defendant on the ground that the plaintiff in order to claim relief in the Suit shall establish the material for cause of action.

Cause of action means every fact, which, would be necessary for the plaintiff to prove, if traversed in order to support his right to judgment. It consists of bundle of material facts which are necessary for the original plaintiff to prove to entitle him to the reliefs claimed in the Suit and it is a bounden duty of the trial Court to ascertain the material cause of action. The test for exercising the power under Order 7 Rule 11(a) is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relief upon, would result in a decree.

In Liverpool & London S.P. & I Assn Ltd. v. M.V. Sea Success I & Anr, 2004 (9) SCC 512, the Apex Court has held as under :-

*“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed”.*

True it is, that it is not permissible to cull out a sentence or a passage, which can be read in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands without addition or subtraction of words. If the allegations in the plaint *prima facie* reveal a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. However, conversely if the Suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the Court would be justified in exercising the power under Order VII Rule 11 Code of Civil Procedure.

The Apex Court in case of *Dahiben Vs. Arvinbhai Kalyanji Bhanushali (supra)*, has re-iterated the law on the aspect of rejection of plaint for not disclosing the cause of action and in para-13, it has been held as under :-

*13. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

*In Swamy Atmanand V. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51, this Court held :*

*"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of*

*action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded” (emphasis supplied).*

*In T. Arivandanadm Vs. T.V. Satyapal & Anr. (1977) 4 SCC 467, this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : -*

*“5. ...The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting created the illusion of a cause of action, nip it in the bud at the first hearing ...” (emphasis supplied)*

*Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, 10 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.*

*If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal<sup>11</sup> held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage.*

*The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court. “*

18           A Three Judge Bench of the Hon'ble Apex Court in case of State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1, has held that the Court must examine the plaint and determine when the right to sue first accrued to the Plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the Defendant against whom the suit is instituted.

19           In the backdrop of the settled position of law, when the entire plaint is perused, it is apparent that the cause of action which has been pleaded in paragraph no.8 of the plaint is illusory and exclusion of the Plaintiff either in the partnership-cum-death deed dated 25<sup>th</sup> November 2018 or in passing of a compromise decree dated 18<sup>th</sup> March 2019 in the Special Civil Suit, can remotely give rise to cause of action in favour of the plaintiff for filing the present Suit. Partnership-cum-death deed has no concern with the plaintiff as the partnership firm was always in existence during the lifetime of late Kachardas Mutha, to the exclusion of the plaintiff since its very inception and its reconstitution likewise never involved her, giving rise to a cause for her to bring the present Suit. The Partnership-cum-death

deed, on death of the father of the plaintiff, adjusting the shares between the existing partners did not give rise to any cause of action to the plaintiff. By an illusory drafting, the claim staked in the plaint is completely meritless as it do not disclose a clear right to sue, accruing to the plaintiff for her exclusion in the partnership-cum-death deed on 25<sup>th</sup> November 2018.

20           The cause of action pleaded as regards setting aside of the Compromise Deed on 18<sup>th</sup> March 2019 is equally vexatious and meritless, since initially the Suit which is referred to, is a Suit filed in the year 1995 in the name of defendant no.1 i.e. Mutha Industries through its Partner Kachardas Mutha as against the defendants – the owners of the suit property which was in form of five plots.

          The Suit was filed for declaration of permanent injunction and it was claimed that the defendant no.1 Smt.Laxmibai Dangmali, is the owner of the said suit property and since the properties mentioned in the Suit were acquired by the Pune Municipal Corporation under a Town Planning Scheme and lay outs were carved out and the defendant no.1 was allotted plots admeasuring 25486 sq.m and since it was covered by the provisions of Urban Land Ceiling and Regulation Act, and could not have been transferred, the defendant no.1 agreed to sale the same to the partnership firm – M/s.Mutha Industries in the year 1985 when defendant no.1 herself was a partner in the said firm.

It was alleged that the necessary permission for exemption was obtained and the defendant no.1 executed a sale deed in favour of the partnership firm on 9<sup>th</sup> March 1987. There was some dispute between the defendant no.1 on one hand and defendant nos. 2 to 12 on the other, and the defendant no.1 instituted Suit No.2238 of 1980 against the opponents who were claiming the said property on the basis of Will executed by the mother-in-law of defendant no.1. In one of the Suit which was filed vide no. 352/81, a compromise was effected between the parties and this compromise was prayed to be declared as illegal, and it was prayed that the defendant nos.2 to 12 were not entitled for any rights and the plaintiff is entitled for all the five plots in its exclusivity. In the said Suit, neither the plaintiff is a party nor she had any interest in the compromise which was effected between the original stakeholders of the property. The compromise decree is passed, under which the plaintiff i.e. the partnership firm was held entitled for plot nos.34, 37 and 39, whereas plot nos.16 and 52, went to the share of the defendants to the suit. The decree was passed on 17<sup>th</sup> March 2019 before the Maha Lok Adalat in terms of the compromise pursis filed by the parties.

The plaintiff cannot claim any cause of action qua the compromise arrived between the parties in the Suit, since the Suit was filed by the firm M/s.Mutha Industries and not individually by her father. Further, it was also compromised by the property being allotted to the Partnership Firm, in which Plaintiff never

had any stake and therefore, no cause of action has accrued to her and the cause of action which is pleaded is merely fictitious.

The Hon'ble Apex Court in Madanuri Sri Rama Chandra Murthy vs Syed Jalal, (2017) 13 SCC 174, has ruled, that an attempt to create the illusion of a cause of action, must be nipped it in the bud so that bogus litigation will end at the earlier stage. A word of caution from the Apex Court is that, the Court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court. The litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court, and the sword of Damocles, need not be kept hanging over his head unnecessarily.

21           The observations of the Apex Court in case of T. Arvandandam Vs. T.V. Satyapal & Ors, (1977) 4 SCC page 467, can be gainfully referred to where Their Lordships have observed as under :-

*“An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi: “It is dangerous to be too good.” [emphasis supplied]*

22           The absence of cause of action for the plaintiff would therefore, go to the root of the matter and the plaintiff deserve a rejection on the said ground, which the learned Judge has failed to consider.

(C) **Barred by Law**

23           The rejection of plaintiff is also sought by the defendant on the ground of being barred by law and the position of law is no more *res integra* that the word ‘Law’ occurring in clause (d) of Rule 11 of Order 7 do not only indicate legislative enactment, but also the judicial precedents. The Defendant invoked the bar under Section 5 of the Partnership Act along with Section 37 and 42.

It is trite position of law that partnership is a relation between persons who have agreed to share the profits of business carried on by all, or any of them, acting for all. The partnership is not created by status and section 5 of the said Act reads thus :-

*“5. Partnership not created by status.—The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business. State Amendment Goa, Daman and Diu.—In section 5, for the words “Burmese Buddhist husband and wife carrying on business as such”, substitute the words “a*

*husband and wife under the regime of communion of property carrying on business as such”.*

24           The creation of a partnership is an act of parties and the Indian Partnership Act, 1932 prescribe and govern relationship of partners with one another and qua the third parties. The introduction of a partner/expulsion of a partner at Will, is governed by the agreement between the parties in form of a contract and the right of the partners are determined in accordance with the terms of arrangement. Section 37 of the Partnership Act confer a right on the outgoing partner in certain cases to share the subsequent profit. Section 37 is based on principle of equitable jurisdiction of the Court to grant relief, where the surviving partner carry on the business of the firm with the property of the firm without any final settlement between him and the outgoing partners and in such a case, the Court has jurisdiction to grant such relief if the necessary facts are found. The dissolution of partnership can either be by consent of all the partners and Section 42 of the Act of 1932 stipulate contingencies when the firm is dissolved, but this is subject to the contract between the partners of a firm and Section 42 provide for dissolution of partnership, on happening of certain contingencies being either expiry of the term if the partnership is constituted for a fixed term, completion of an adventure or undertaking if the partnership is formed for carrying out a

particular adventure or undertaking; by death of a partner and by adjudication of a partner, as an insolvent.

25 In the background of the statutory scheme, the relief claimed by the plaintiff in the plaint of her induction as a partner in M/s.Mutha Industries, on the premise that she is the daughter of Late Kachardas Nensukh Mutha, in any case, cannot be granted and is hit by the concept of partnership itself. The deed of partnership in form of partnership-cum-admission deed dated 15<sup>th</sup> September 2017, was executed to admit Siddharth Mutha as admitting partner to the existing partnership and the nature of partnership was set out to be 'at Will'. Paragraph no.16 of the said deed prescribe for Settlement of Accounts and Goodwill by including the following clause :

*“The firm shall not dissolve automatically on the retirement, death or insolvency of any partner, if other partner continues business in partnership. The retiring partner or heirs of deceased partner shall not be entitled to receive any amount as goodwill or otherwise beyond the balance standing to the credit of such parties capital account in the books of the firm after adjusting the share of profit or loss upto the date of retirement or death determined on time basis on net profit or loss as shown by the Profit and Loss Account of the accounting year during which such retirement or death takes place.”*

By virtue of the said clause contained in the Partnership deed, it is apparent that the heir of the deceased partner could not be admitted as a partner and the legal heir is only entitled to seek a

relief as Settlement of Accounts.

26           The Settlement of Accounts came to be further governed by the Registered last Will and Testament of late Kachardas Nensukh Mutha, who declared that on his death, his share in Mutha Industries shall devolve upon his grandson – Siddharth, who was appointed as his successor in interest as per his last wish and desire. The probate proceedings are pending and subjudice as regards the said Will at the instance of Siddharth Mutha. The said Will has disinherited the plaintiff from any property by Kachardas Mutha and therefore, on his death, the partnership-cum-death deed was executed on 25<sup>th</sup> November 2018, deleting him from the partnership deed and his interest being substituted, by a person appointed by him under his last Will, in favour of Siddharth Mutha. The partnership-cum-death deed re-constituted the existing partnership w.e.f 14<sup>th</sup> August 2018 and stipulated the following clause for Settlement of Accounts and Goodwill in the following terms :-

**“SETTLEMENT OF ACCOUNTS AND GOODWILL**

*The firm shall not dissolve automatically on the retirement, death or insolvency of any partner. Other partner will continues business in partnership. The retiring partner or heirs of deceased partner shall not be entitled to receive any amount as goodwill or otherwise beyond the balance standing to the credit of such parties fixed capital account and current*

*capital account in the books of the firm after adjusting the share of profit or loss upto the date of retirement or death determined on time basis of net profit or loss as shown by the Profit and Loss Account of the accounting year during which such retirement or death takes place.”*

27 In wake of the aforesaid specific clause in the partnership deed, the claim in the plaint for induction of the plaintiff and defendant nos.16 to 18 as partners is not sustainable and since it cannot be granted, being barred by law.

On reading of the averments in the plaint along with the documents filed with the plaint, the undisputed fact which emerge is that the plaintiff was never involved as a partner in the Constitution or re-constitution of the partnership firm – M/s.Mutha Industries, and merely because she is an heir of deceased – Kachardas Mutha, she is not entitled for being inducted as a partner along with original defendant nos.16 to 18 and at her instance, the partnership-cum-death deed dated 25<sup>th</sup> November 2018 cannot be declared as null and void. The reading of the plaint manifestly indicate that a relief claimed in the Suit cannot be granted and if the said relief cannot be granted, the Suit is manifestly vexatious and without any merit which would justify exercise of power under Order 7 Rule 11(d) of the Code of Civil Procedure.

(D) **Barred in terms of Order 23 Rule 3A of CPC.**

28           The rejection of plaint was also sought on the ground that the suit is barred in terms of Order 23 Rule 3A which reads as under :-

“No Suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful”.

The finality of decisions is the underlying principle of all adjudicating forums. No litigation shall have its basis, a compromise effected between the parties. The aforesaid provision of law prohibit institution of a Suit to set aside a decree on the ground that the compromise on which the decree is based, was not lawful.

Here is the plaintiff who has instituted a Suit seeking a declaration that a compromise effected between the parties resulting into a decree dated 18<sup>th</sup> March 2019, is unlawful, though she is not even remotely concerned with the said Suit which was compromised. She is a stranger to the Suit and cannot seek a relief of setting aside the compromise decree on the ground that the defendant no.2, on demise of her father had no authority to compromise the same. The learned Judge has completely missed the said aspect, being that the suit is barred in terms of Order 23 Rule 3A. The scheme of Order 23 Rule 3 being intended to avoid multiplicity of litigation and permitting the parties to come to a settlement which is lawful, and once the Court has granted finality to the compromise, another Court shall not be competent to question the said compromise. The suit instituted by the

plaintiff is therefore, not maintainable seeking the relief as prayed for setting aside the compromise decree.

(E) **Latest Position of Law.**

29           Recently, the Hon'ble Apex Court in case of *Rajendra Bajoria and ors Vs. Hemant Kumar Jalan and ors (Civil Appeal No.5819/5822 of 2021 decided on 21<sup>st</sup> September 2021)*, dealt with a similar issue where the plaintiffs, the sons of the partners who had died, had instituted a Civil Suit seeking a declaration that the plaintiffs along with the defendants who are legal heirs of the original partners in a partnership firm known as 'Soorajmull Nagarmull' are entitled to the assets of the properties of the firm, as the heirs of the original partners of the reconstituted firm, in the share of the said original partners, and who sought a declaration that they are consequently entitled to represent the firm in all the proceedings before the concerned authorities of the State for acquisition of its parcel of land at Bhagalpur. The plaint also sought a relief of decree in the form of dissolution of firm and for winding up of its affairs and releasing the assets and properties of the firm, by collecting all the monies due to the firm, paying its debts etc.

30           On an application being moved for rejection of the plaint on the ground that it did not disclose any cause of action, the learned Single Judge dismissed the Application. However, it

did not consider the application on the ground of rejection of the plaint on the issue of limitation, on the ground that limitation was a mixed question of fact and law. The Division Bench of the High Court by the impugned judgment allowed the Appeals and rejected the plaint on the ground that the reliefs as claimed in the plaint cannot be granted. In asserting the claim of being barred by law, the provisions of Sections 40, 42, 43, 44 and 48 of the Indian Partnership Act were projected in form of bar in law and the arguments advanced was to the effect that in terms of Section 40 of the Act, a firm can be dissolved only with consent of all the partners or in accordance with the contract between the partners. By referring to the clause in the partnership deed, which did not contain a provision of automatic dissolution of partnership upon death of any partner, the argument advanced was to the effect that the plaintiffs who are not the partners could not bring such a Suit seeking dissolution of partnership.

31           On consideration of the provisions of the Partnership Act, particularly Section 40, 42, 43 and 44 and by referring to the relevant clauses of the partnership deed, the Hon'ble Apex Court referred to its earlier decision in case of Pearlite Liners (P) Ltd. v. Manorama Sirsi, (2004) 3 SCC 172, wherein it was observed as under :-

“17 It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as

claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold. This Court, therefore, upheld the order passed by the trial court of rejecting the suit and that of the appellate court, thereby affirming the decision of the trial court. This Court set aside the order passed by the High Court, wherein the High Court had set aside the concurrent orders of the trial court and the appellate court and had restored and remanded the suit for trial to the trial court”.

32            On threadbare analysis on each of the reliefs sought in the Suit, the Apex Court held as under :-

“Prayers (d) and (e) both pertain to dissolution of the firm. Prayer (e) is for a decree of dissolution and for winding up of the affairs of the firm. Prayer (d) is for full accounts of the firm for the purpose of its dissolution (emphasis is ours). However, it is settled law that only the partners of a firm can seek dissolution of the firm. Admittedly, the plaintiffs are not partners of the said firm. Sec. 39 of the Partnership Act provides that the dissolution of partnership between all the partners of a firm is called 'the dissolution of the firm'. Sec. 40 provides that a firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Sec. 41 provides for compulsory dissolution of a firm. Sec. 42 stipulates that happening of certain contingencies will cause dissolution of a firm but this is subject to contract between the partners. A partnership-at-will may be dissolved by any partner giving notice in writing to the other partners of his intention to dissolve the firm, as

provided in Sec. 43 of the Act. Sec. 44 empowers the Court to dissolve a firm on the grounds mentioned therein on a suit of a partner.

Thus, it is clear that it is only a partner of a firm who can seek dissolution of the firm. The dissolution of a firm cannot be ordered by the court at the instance of a non-partner. Hence, the plaintiffs are not entitled to claim dissolution of the said firm. Consequently, they are also not entitled to pray for accounts for the purpose of dissolution of the firm.

33           The following observations of their Lordships on the course to be adopted when there is no cause of action made out, is of great relevance and need a reproduction.

What should the Court do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the plaintiffs and the defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the defendants to go through the ordinarily long drawn process of trial of a suit at huge expense, not to speak of the anxiety and unpeace of mind caused by a litigation hanging over one's head like the Damocles's sword. No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint. The plaintiffs have not prayed for leave to amend the plaint. When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of

action. The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and the prayers made in a plaint are inextricably intertwined. In the present case, the cause of action pleaded and the reliefs claimed are not recognized by the law of the land. Such a suit should not be kept alive to go to trial....”

With the aforesaid observation, the Special Leave to Appeal came to be rejected upholding the decision to reject the plaint on the ground of lack of cause of action.

34 I find support in the aforesaid judgment in upholding the submission advanced by the counsel for the applicants and since it is now a settled position of law that a plaint which is barred by law may not be allowed to be prosecuted as it would be merely undergoing a rigmarole of trial when at the end of it, no relief can be granted on the basis of averments made in the plaint. The formality of a trial need not deter the Court from scuttling the Suit at the very inception when no cause of action is disclosed or when the Suit is barred by law.

Another ground raised for rejection of plaint on the ground that the Suit is undervalued, is not considered and the finding rendered is the Suit is perfectly valued. Further, the said ground was not considered as the application invoked only Order 7 Rule 11 (a) and (d). The learned Judge has therefore, rightly not considered the said ground.

35           In the wake of the aforesaid discussion, when the Suit filed by the plaintiff lack cause of action and is barred by law, it cannot be permitted to be protracted unnecessarily and it is rather imperative to put an end to the sham litigation so tht the judicial time is not wasted. The Suit filed by the plaintiff being vexatious, meritless and lacking cause of action, deserve a dismissal by rejecting the plaint. The learned Judge in the impugned order has refused to exercise his power under Order 7 Rule 11 and this order cannot be sustained and is liable to set aside. Resultantly, the Civil Revision Application is allowed and the application filed by the applicants under Order 7 Rule 11(a) and (d) of the Code of civil Procedure is also allowed in terms of the relief prayed therein being granted; resultantly, the plaint is rejected as being barred under law and for not having any cause of action in favour of the plaintiff.

**(SMT.BHARATI DANGRE, J)**