

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.982 of 2018

Buddhist Thai Bharat Society Through Its General Secretary Mr. Venerable Ratneshwar Chakma @ Ratnes S/o Shri Shanti Kumar Chakma, Resident of Buddhist Thai Bharat Society, Village- Mastipur, P.O.+P.S.- Bodh Gaya, District- Gaya, Bihar

... .. Petitioner

Versus

1. Shri Shashi Bhushan S/o Shri Baleshwar Prasad Singh Resident of Mir Abu Saleh Road, Murarpur, P.S.- Kotwali, District- Gaya, Bihar
2. Krishna Kumar Pandey S/o Shri Vishwanath Pandey Resident of Village- Mastipura, P.S.- Bodh Gaya, District- Gaya., Bihar
3. Shri Rakesh Kumar Manjhi Ex. MP. Resident of Village- Pachhatti, P.S.- Bodh Gaya, District- Gaya, Bihar
4. Shri Atanu Chakravarty S/o Shri M.M.Chakravarty Resident of Dakshi Darwaza, P.S.- Civil Lines, District- Gaya, Bihar
5. Shri Anirudh Kumar Singh S/o Shri Kamta Prasad Resident of Bengali Colony, Gaiwal Bigha, P.S.- Rampur, District- Gaya, Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rana Vikram Singh, Advocate Mr. Nishant Kumar Jha, Advocate Mr. Vivek Anand, Advocate
For the Respondent/s	:	Mr. Md. Javed Jafar Khan, Advocate Mr. Kumar Gangesh Gunju, Advocate Mr. Raja Ram Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 10-08-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 09.01.2018 passed by the learned Munsif, Gaya in Title Suit No. 29 of 2016 whereby the learned Court below rejected the application filed under Order 7 Rule 11 of the Code of Civil



Procedure, 1908 (in short, C.P.C.).

3. The brief facts of the case are that respondents preferred a Title Suit No. 29 of 2016 (81 of 2014) under Order 1 Rule 8 read with Section 92 of C.P.C. seeking relief of perpetual injunction against the petitioner. The title Suit was preferred mainly on the ground that the petitioner-society is acting contrary to its aim and objectives and its constitution and tenure of Governing body of the defendant-society is permanent. Plaintiff No. 1 is member of Governing body of defendant-society and the notice dated 11.09.2014 issued by defendant-society calling general body meeting pertaining to election of Governing body of the society is contrary to the constitution of the defendant-society. Buddhist Thai Bharat Society, the petitioner herein is a religious, cultural, social and non-political organization devoted to the cause of Buddhism having large number of devotees, donor and allegiances whose sentiments, interests, right and title are directly involved in the defendant-society and the plaintiffs have filed the suit not only in their personal capacity but also as representatives of all the persons having any sort of interest, right, sentiments and title in the defendant - society. The written statement was filed on behalf of the petitioner and it was averred therein that the suit is not



maintainable as there is no cause of action and the suit stands barred by law among other various objections. It was also averred that plaintiffs / respondents being non-members of the society are not entitled to seek any relief as prayed for and the suit is collusive suit filed at the instance of Mr. Kittu Nawani, the formal General Secretary of the petitioner-society. Plaintiffs / respondents filed an application under Order VI Rule 17 C.P.C. thereby seeking an amendment to the plaint with prayer for declaration that Annual General Meeting dated 25.10.2014 of the petitioner is illegal and the tenure of office bearers of society is permanent.

4. The petitioner-society preferred an application dated 29.01.2016 under Order 7 Rule 11 of C.P.C. for rejection of the plaint stating that suit is preferred by respondents under Section 92 of C.P.C. is not tenable in law. The suit is also barred by law and there is no cause of action. The plaintiffs further filed amendment application dated 04.04.2016 under Order VI Rule 17 C.P.C. contending that Section 92 of C.P.C. has been wrongly typed and it should have been Section 151 of C.P.C. and vide Order dated 06.05.2016, the learned trial Court allowed the aforesaid amendment applications dated 14.01.2016 and 04.04.2016 filed by the plaintiffs / respondents. The said order



was challenged before this Court under Article 227 of the Constitution of India and this Court vide order dated 03.08.2016 held that the application of respondents / plaintiffs under Order VI Rule 17 C.P.C. has been rightly allowed and also observed that as and when any order is passed on application of petitioner filed under Order VII Rule 11 C.P.C., the petitioner has a right to challenge the same. Against the said order of this Court, the petitioner preferred a Special Leave Petition being SLP (Civil) No. 39514 of 2016 in which the Hon'ble Supreme Court granted permission to the petitioner to amend the original application dated 29.01.2016 filed under Order 7 Rule 11 C.P.C. The Hon'ble Supreme Court further directed to decide the amended application within three months on its own merits and in accordance with law. The petitioner in pursuance of the Order dated 18.10.2016 passed by Hon'ble Supreme Court filed amended application under Order VII Rule 11 C.P.C. dated 26.10.2016 before the learned trial Court. The said application for rejection of plaint has been rejected by the learned trial Court vide impugned order dated 09.01.2018.

5. Learned counsel for the petitioner submits that mere change of Section 92 to 151 C.P.C. from the cause title of the plaint would not change the subject matter of case meant for



Section 92 of C.P.C. and the same is not maintainable in the eye of law as averments in the plaint relates to Section 92 C.P.C. remains unchanged. Therefore, the suit is still barred under Section 4 (5) of Bihar Hindu Religious Trust Act, 1950. The suit is not maintainable under Order 1 Rule 8 C.P.C. as non-members of the society cannot maintain an action under Order 1 Rule 8 C.P.C. and in the present case plaintiff Nos. 2 to 5 are non-members of the society. There is no cause of action for filing the suit and the same is filed only to secure the interest of one Mr. Kitti Nawani who was removed from the society because of his fraudulent activity and registration of F.I.R. against him. Further, he has submitted that to maintain a suit under Order 1 Rule 8 C.P.C., the parties instituting the suit must have the same interest. However, in the present case, the plaintiffs have no common or the same interest which is clear from a bare perusal of the plaint. Plaintiff No. 1 agitating his personal agenda under the garb of present proceeding and remaining plaintiff Nos. 2 to 5 are claiming to be loyal donor/ devotee and seeking to represent in public interest. However, the relief is sought for Mr. Kitti Nawani who is an accused in serious case of cheating and forgery and is currently absconding. The learned trial Court failed to appreciate that the suit is not only barred under the law,



but it is frivolous and complete abuse of the process of law and the plaint does not disclose the cause of action. It is submitted that it is obligatory upon the plaintiffs / respondents to produce the documents upon which respondents have preferred the title suit but in the present case plaintiffs have not produced any documents on which cause of action is based.

6. He has further submitted that the plaintiffs have not exhausted the alternative remedy as available in Rule 12 and 13 of the Bihar Societies Registration Rules, 1965. The learned trial Court further erred in law in allowing the request of respondents contesting the Title Suit in a representative capacity.

7. Learned counsel for the petitioner is support of his contention referred and relied on various Judgments of the Hon'ble Supreme Court including **T. Arivandandam Vs. T.V. Satyapal and Anr.** reported in **1977 (4) SCC 467, N.D.M.C. Vs. Satish Chand** reported in **2003 (10) SCC 38., Ramisetty Venkatanna & Another Vs. Naryam Jamal Saheb and Others 2023 SCC OnLine SC 521, and Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and Others 2021 SCC OnLine SC 764.**

8. On the other hand, learned counsel for the respondents submits that plaintiff / respondent No. 1 is the



member of the society and plaintiff Nos. 2 to 5 are not only donors / devotees of the society but they are also members of the society hence, they have common interest in the welfare of the society. So, there is no personal agenda rather they are seeking to ensure proper administration of the society. There is sufficient cause of action disclosed in the plaint of the title Suit. Prior permission of learned Court before institution of suit is not mandatory and the same may be obtained later on at any stage. During pendency of the suit, the permanent General Secretary of the Society, namely, Mr. Kittu Nawani was removed from the Society on 25.10.2014 violating mandatory provisions of the constitution of the Society which required to be added in the relief and the amendment petition was allowed by the learned trial Court, hence, the same cannot be termed as illegal. Mr. Kittu Nawani, who is a permanent General Secretary of the petitioner-society and is a Buddhist activist has been made accused in false and frivolous criminal case in criminal conspiracy to grab the management of the Society. Lastly, he has submitted that the learned trial Court vide impugned order has rightly rejected the petition of the petitioner which requires no interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution as there is no jurisdiction error or illegality in the



impugned order.

9. Order VII, Rule 11 of C.P.C. lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merit. The real object of Order VII Rule 11 of C.P.C. is to keep out Courts irresponsible law suits and in case Court is *prima facie* persuaded of the view that the suit is an abuse of the process of the Court, in sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the C.P.C. can be exercised.

10. The Apex Court in **I.T.C. Co. Limited Vs. Debt Recovery Appellate Tribunal (1998 (2) SCC 70 : AIR 1998 SC 634)** held that the power of rejection of the plaint can be exercised even after framing of issues and matter is posted for evidence and has further held that it was incumbent upon the concerned court to look into the matter as to whether real cause of action has been set out or something illusory has been stated with a view to get out the Order VII Rule 11 of the Code of Civil Procedure.

11. This Court in **Bhagirath Prasad Singh Vs. Ram Narayan Rai & Anr. (2010 SCC OnLine Pat 737: (2013)1 PLJR 738)** in Para Nos. 11 and 12 held as under:-



*“11. Law is well settled that dexterity of the draftsmen whereby the material facts are camouflaged in a cleverly drafted plaint and illusionary cause of action is set out, cannot defeat the right of the defendant to get the plaint rejected. In this regard it would be pertinent to quote the relevant passage of the observation of the Apex Court in **T. Arivandandam v. T. V. Satyapal, (1977) (4) SCC 467 : (AIR 1977 SC 2421)** (SCC p. 470, para 5 as under).*

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif Court 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 and order 7, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 C.P.C.. An activist Judge is the answer to irresponsible law suits.”

12. From the aforesaid decisions of the Apex Court rendered in T. Arivandandam v. T.V. Satyapal (supra) as well I.T.C. Limited v. Debts Recovery Appellate Tribunal (supra) it would emerge that the gross abuse of process of Court would be condemned. Further, the reading of plaint for the purposes of Order VII, Rule 11 of the Code of Civil Procedure would be meaningful reading and not only the formal reading of the same. If real cause of action has not been set out in the plaint rather something



illusionary has been stated with a view to get out the scope of Order VII, Rule 11 of the Code of Civil Procedure, such clever drafting and suppression of material facts are not permitted in law and hence such action should be nipped at the bud. Similar view has been taken by learned Single Judge of this Court in Vikash Singh V. Sri Krishna Prasad Sinha (C.R. No. 1044 of 2006) disposed of on 27.09.2007.”

12. The Apex Court in **Ramisetty Venkatanna and Another Vs. Naryam Jamal Saheb and Others 2023 SCC OnLine SC 521** has referred and relied on the Judgment of T. Arivandandam (supra) and other judgments that the plaint ought to have rejected in exercise of power under Order VI Rule 11 (a) and (d) of C.P.C. if it is vexatious, illusory cause of action or barred by limitation.

13. The Apex Court in **Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and Others (2021 SCC OnLine SC 764)** in para 20 held as under:

“20. It could thus be seen that this Court has held that the power conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of C.P.C. are required to be strictly adhered to. However, under Order VII Rule 11 of C.P.C., the duty is cast upon the Court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of C.P.C. is that when a plaint



does not disclose a cause of action, the Court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

14. According to the petitioner, the pleadings of the plaintiff does not disclose any valid cause of action as the facts upon which they have based their claim are false, frivolous and concocted. Before discussing this aspect, it is necessary to appreciate the meaning of the term “cause of action”. The expression “cause of action” is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a factual situation that entitles one person to obtain a remedy in Court from another person.

15. In **Rajasthan High Court Advocates’ Assn. V. Union of India (2001) 2 SCC 294**, the Hon’ble Supreme Court discussing the term “cause of action” held that: “The expression “cause of action” has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would



be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to prove each fact, comprises in “cause of action”. It has to be left to be determined in each individual case as to where the cause of action arises.”

16. Cause of action has also been elaborated by the Hon’ble Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society V. Ponniamman Educational Trust** reported in **(2012) 8 SCC 706** in paragraphs 13 to 15 which are as under:

“13. While scrutinizing the plaintiff 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.

14. In **A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies (1989) 2 SCC 163**, this Court explained the meaning of “cause of action” as follows:

“12. A cause of action 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. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

15. It is useful to refer the judgment in **Bloom Dekor Ltd. vs. Subhash Himatlal Desai (1994) 6 SCC 322**, wherein a three Judge Bench of this Court held as under:

“28. By “cause of action” it is meant 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, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.”

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.”

17. Having heard learned counsel for the parties and on perusal of material on record, it appears from the impugned order that learned Court below observed that Buddhist Thai



Bharat Society is incorporated under Indian Societies Act, 1860 and in the plaint the prayer is for the direction of the Court to pass order ensuring proper administration of the society and not trust. Hence, the contention of the petitioner that since the entire subject matter of the plaint has been filed to gain relief under Section 92 of C.P.C. hence, the suit is barred under the law as per Section 4 (5) of Bihar Hindu Religious Trust Act, 1950 in the State is not tenable. The aforesaid provision (Section 92 C.P.C.) and the restriction under Section 4 (5) of Bihar Hindu Religious Trust Act, 1950 basically applies for trust and not for society which is subject matter of this case. It is further observed that plaintiff No. 1 has not specifically stated the personal agenda in its petition and other plaintiffs basically sought intervention of the Court to ensure proper administration of the society and declaration of Kitti Nawani as permanent General Secretary of the said society was sought later on as part of the other reliefs after making amendment in the plaint when petitioner convened General Body meeting of the society and removed Kitti Nawani from the position of permanent General Secretary on 25.10.2014.

18. Learned Court below also observed that Order 1 Rule 8 C.P.C. talks about same interest of the plaintiffs and not



about the public interest of the plaintiffs as claimed by the petitioner. The object of the Rule is to facilitate the decision of questions in which large number of people having same interest are involved. The learned Court below *prima facie* does not find anything frivolous, vexatious or abuse of the process of Court. The plaintiff merely seeks adjudication of the affairs of the society and governing council so as to ensure proper administration of the society created for charitable purpose. The learned Court below also observed that after going through the averments made in the plaint, the Court find that the plaint sets out the requisite material facts that disclose a cause of action and gives rise to triable issues.

19. The learned Court below after considering the submissions on behalf of the parties and material on record rejected the petition dated 26.10.2016 by reasoned order as stated above. The learned Court below rightly rejected the petition dated 26.10.2016 of the petitioner under Order VII Rule 11 (a) and (d) of C.P.C.

20. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any jurisdictional error or illegality in the impugned order for interference of this Court in its supervisory jurisdiction under



Article 227 of the Constitution. This Miscellaneous Application is devoid of merit and is liable to be dismissed.

21. This Civil Miscellaneous Application, is accordingly, dismissed.

22. Litigation between the parties are pending before the learned trial Court, this Court at this stage, refrain from expressing any opinion on the merits of the suit. Nothing in the present order shall be deemed or construed as any expression of opinion or observation by this Court at final hearing of the suit which naturally will have to be decided on its own merit.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	27.07.2023
Uploading Date	10.08.2023
Transmission Date	

