

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

909. CIVIL REVISION APPLICATION NO. 87 OF 2023

Ravindra s/o. Dattatrya Sanap,
Age: 51 years, Occup. Business,
R/o. Opp. To Tarakpur Bus Stand,
Tq. & District Ahmednagar.

.. APPLICANT

VERSUS

1] Sachin Vilas Kakade,
Age: 26 years, Occup. Agriculturist.

2] Amol Vilas Kakade,
Age: 29 years, Occup. Agriculturist.

3] Dnyaneshwar Nanasaheb Kakade,
Age: 31 years, occup. Agriculturist.

All R/o. Usthal Dumala, Tq. Newasa,
Dist. Ahmednagar, through GPA
Vilas Asaram Kakade,
Age: 55 years, Occup. Agriculturist,
R/o. Usthal Dumala, Tq. Newasa,
Dist. Ahmednagar.

4] Pradeep Madhav Kakade,
Age: 33 years, occup. Agriculturist

5] Madhav Asaram Kakade,
Age: 59 years, Occup. Agriculturist.

6] Smt. Nirmala Pradeep Kakade,
Age: 34 years, Occup. Agriculturist,
Respdt. Nos.4 to 6 R/o. Pandurang
Nagar, Nimbalak, Tq. Newasa,
Dist. Ahmednagar.

.. RESPONDENTS

...
Mr.Vijay B. Jagtap, Advocate for the applicant
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 16.06.2023

P.C. :

1] By the present Writ Petition, the applicant is challenging the order passed by the Joint Civil Judge Senior Division, Newasa, dismissing the application filed by the applicant - defendant no. 4 under Order VII Rule 11 of the Civil Procedure Code [for short 'CPC'].

2] The Special Civil Suit No.170 of 2022 is filed by the plaintiffs for declaration and permanent injunction. The plaintiffs sought declaration about the sale deed dated 26.09.2022 executed by defendant nos.1 to 3 in favour of the defendant no.4 is void *ab-initio* as it is violation of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 [for short 'the Act of 1947']. The plaintiffs have also sought relief that they are owners of the joint family property which is contiguous to

the suit land and that they have preferential right to purchase the suit property which is sold to the defendant no.4 by the defendant nos.1 to 3.

3] After issuance of the notice, the defendants appeared. Thereafter, the applicant – defendant no. 4 has filed an application under Order VII Rule 11 of CPC. It is further the contention of the applicant – defendant no. 4 that the suit does not disclose any cause of action and reliefs sought in the plaint are illegal. It is further the case of the applicant – defendant no. 4 that there is division of the property between the family members and that he has purchased the divided property from the owners of the suit property and that the plaintiffs have no concern with the said suit property.

4] It is further contention of the applicant – defendant no. 4 that there is no violation of the Act of 1947 because he has purchased, divided and partitioned property. He further submits that if there is violation of the compromise deed entered between the plaintiffs and other

defendants, then there would be remedy available to the parties to challenge the compromise deed and not challenge the sale deed made by the defendant nos.1 to 3 in favour of the defendant no.4. He contends that the suit filed by the plaintiffs in all probability is going to fail. The applicant is unnecessarily dragged into litigation.

5] After considering the application filed under Order VII Rule 11 of the CPC, the trial Court on consideration of the material rejected the said application.

6] From the bare reading of the plaint it is obvious that the plaint is for the declaration that the sale deed dated 26.09.2022 executed by defendant nos.1 to 3 in favour of defendant no.4 is void *ab-initio* and it is not binding on the plaintiffs. The plaintiffs contend that they are contiguous owners and they have preferential right to purchase the suit property. It is further contended that the sale deed dated 26.09.2022 has given rise cause of action to the plaintiffs to file the suit.

7] The law on the subject as regards the jurisdiction under Order VII Rule 11 of the CPC has been summarized in the case of **Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others** reported in [2022] 12 SCC 641 and the said judgment 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 CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, 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 CPC 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 a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.

8] In the case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs** in Civil Appeal No.2960 of 2019, decided on March 13, 2019 and the Hon'ble Supreme Court has held in para 6.2 to 6.8 as under :

6.2 While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered.

6.3 In the case of **T. Arivandandam** (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently 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 complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC 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, CPC. An activist Judge is the answer to irresponsible law suits.....”

6.4 In the case of **Church of Christ Charitable**

Trust and Educational Charitable Society (supra), this Court in paras 13 has observed and held as under:

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

6.5 In **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem** (supra), 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.”

6.6 In the case of **Sopan Sukhdeo Sable** (supra) in paras 11 and 12, this Court has observed as under:

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

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V.Satyapal* (supra).”

6.7 In the case of **Madanuri Sri Rama Chandra Murthy** (supra), this Court has observed and held as under:

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

show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

6.8 In the case of **Ram Singh** (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

9] On perusal of the law laid down in the above mentioned cases, it is the duty cast upon the Court to scrutinize the plaint and accompanying documents and ascertain whether the plaint discloses a cause of action and that the plaint is within limitation and not unnecessarily protract the proceedings. The Hon’ble Supreme Court also held that the power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in order 7 Rule 11 are required to be strictly adhered to. The Hon’ble Supreme court has held that the

purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the Court.

10] Now coming to the facts of the instant case, there is cause of action to file the suit. The suit being filed after registration of the sale deed and the plaintiffs have pleaded that they have a preferential right to purchase the suit property and thus the suit cannot be rejected at this stage. In view of the same, the present Civil Revision Application is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC