

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

910 CRA NO.109 OF 2023

SHARADKUMAR PURUSHOTTAM DEVALE AND ORS
VERSUS
NARAYAN TRIMBAKRAO ZADE AND ORS.

...
Advocate for Petitioners : Mr. Rahil Kazi h/f. Mr. P. R. Katneshwarkar
...

CORAM : ARUN R. PEDNEKER, J.
DATED : 05/07/2023

ORDER :

1. By the present Civil Revision Application (CRA), the applicants are challenging the order passed under Order VII, Rule 11 of Civil Procedure Code (in short 'CPC') by the learned Civil Judge, Senior Division, Gangakhed dated 5.4.2023 in Regular Civil Suit No. 286/2013, wherein defendant Nos. 1 and 2 have prayed for rejection of the plaint. The said application has been rejected.

2. Brief facts, leading to the institution of the present CRA, can be summarized as under :-

The plaintiffs have filed the suit for the relief of declaration of ownership over the suit property as described in para No. 2 of the plaint and for the relief of permanent injunction from causing interference in the peaceful possession of the plaintiffs over the suit property. In the said suit, the defendant Nos. 1 and 2 have filed an application under Order VII, Rule 11 of CPC, praying to reject the plaint on the following grounds :-

"i) The plaintiffs claimed defendant nos. 1 and 2 having sold out the suit property to defendant nos. 3 to 76. But, have not claimed any relief. Therefore, the suit is defective under Order VII Rule 5 of C.P.C. and liable to be dismissed.

ii) The suit property is not properly described as required under Order VII Rule 3 of C.P.C. Therefore, suit is liable to be dismissed.

iii) The plaintiffs have not properly valued the suit as per Court Fee Act. Therefore, suit is liable to be dismissed.

iv) The plaintiffs claimed defendant nos. 1 and 2 having entered mutation entries in their favour prior to 59 years. Therefore, the suit is barred by limitation and liable to be dismissed.

v) The plaintiffs have not impleaded purchaser, Sakharam. Therefore, suit is liable to be dismissed.

vi) The plaintiffs claimed declaration. But, it is barred by Article 58 of Limitation Act. Hence, prayed accordingly."

3. On perusal of the plaint, it is seen that the plaintiffs have filed the suit for declaration of ownership along with perpetual injunction. The plaintiffs have impleaded 80 defendants who appear to be purchasers of the suit property at various point of time. It is the case of the plaintiff that that defendant Nos. 1 and 2 having manipulated revenue record and caused mutation entry to be taken in their name in the year 1955-56 and that the plaintiffs have realized the fraudulent act of defendant No. 1 on 20.8.2013 on inspecting the revenue record and therefore, the suit came to be filed in the year 2013.

4. The Trial Court held that the plaintiffs have not challenged any sale-deeds allegedly executed by defendants. The suit is merely for declaration of title and injunction. The Trial Court further held that the facts contended by the defendants are mixed questions of law and facts and therefore, they would be requiring adjudication after framing of issues.

5. 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.

6. 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 plaints. 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 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.

7. Rejection of plaint is a very serious issue and the order under Order VII Rule 11 should not be passed in cursory manner. The termination of the suit at the outset is extremely serious and the same has to be exercised only when the Court comes to the conclusion on the plain reading of the plaint that there is no point in continuing the litigation against the defendants.

8. Perused the plaint and the documents. The learned counsel for the applicants submits that it is the contentions of the defendants that there was prior compromise entered into between the mother of the plaintiffs and the defendant Nos. 1 and 2, whereby mother of the plaintiffs had given right on the suit property to the defendant and the present plaintiffs are bound by the said consent terms. The plaintiffs were not party at the relevant time to the said consent terms and plaintiffs are claiming suit properties through the mother. The counsel further submits that no other sale deeds are challenged by the plaintiffs and the plaint is extremely loose and bereft of details that the plaintiffs are bound by the earlier consent decree. The learned counsel therefore submits that the Trial Court should have rejected the plaint under Order 7 Rule 11 of CPC.

9. Order VII, Rule 11 of CPC reads as under :-

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 written 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 provision of Rule 9.

10. The plaint is liable to be rejected when the plaint does not disclose cause of action, when the relief claimed in the plaint is under valued, when the plaintiff fails to supply stamp paper despite directions and when the suit appears from the statement in the plaint to be barred by any law etc.. The contention of the plaintiffs in the instant case is that the cause of action arose on 20.8.2013 and the suit is filed in the year 2013 after the cause of action. The cause of action arose when the plaintiffs noticed fraudulent acts of the defendant Nos. 1 and 2 after inspection of mutation entries in the year 2013. The plaintiff has not disclosed the earlier consent terms entered between the plaintiffs and the defendants/appellants. The effect of the earlier consent terms entered into by the plaintiffs' mother will have to be seen at the stage of trial. The suit as claimed by the plaintiffs is prima-facie not beyond the limitation. However, the date of cause of action is also mixed question of facts and law. In view of the same, there is no error in the order passed by the Trial Court rejecting the application of the defendant Nos. 1 and 2 filed under Order 7, Rule 11 of C.P.C. Hence, the present CRA is dismissed.

[ARUN R. PEDNEKER J.]