

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 784 OF 2022
WITH
CIVIL APPLICATION NO. 16499 OF 2022
IN
SECOND APPEAL NO. 784 OF 2022

Shivram Ananda Patil	... Appellant
<i>Versus</i>	
Santosh Bhavlal Patil & Anr.	... Respondents

...
Mr. Vinod P. Patil – Advocate for appellant
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CORAM : GAURI GODSE, J.
DATE : 08th FEBRUARY, 2023

PER COURT :

1. This second appeal is filed by the original defendant no. 1 challenging the judgment and decree dated 05th July, 2022 passed by the learned District Judge-2, Amalner in Regular Civil Appeal No. 13 of 2021. By this decree, the first appellate court has set aside the order of the trial court by which the plaint of the respondent no. 1 was rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908, for want of cause of action.
2. The respondent no. 1 had filed Regular Civil Suit No. 25 of 2020 for declaration of title and injunction. The appellant

appeared in the suit and filed an application under Order VII Rule 11(a) of CPC thereby contending that there was no cause of action for filing the suit and hence the plaint be rejected under Order VII Rule 11(a) of CPC. The learned Trial Judge by judgment and order dated 30th June, 2021 allowed the application of the appellant and rejected the plaint under clause (a) of the Rule 11 of the Order VII of CPC. The said rejection being a decree was challenged by the plaintiff/respondent no. 1 by filing Regular Civil Appeal No. 13 of 2021. The said appeal is allowed and the order passed by the Trial Court rejecting the plaint is set aside and the suit is restored to its original stage. This order is challenged by defendant no. 1 by filing the present second appeal.

3. The learned counsel for the appellant submitted that the trial court after examining the pleadings had recorded a finding that there was no cause of action to file the suit and thus had rightly rejected the plaint. He further submitted that the first appellate court only by holding that there should have been an opportunity given to the plaintiff to amend the suit, has set aside the rejection of the plaint and has restored the suit to file. He therefore submitted that such an approach of the first appellate court in

reversing the finding recorded by the trial court is perverse and not sustainable and hence the second appeal be admitted.

4. I have perused the record of the second appeal as well as the plaint. In paragraph no. 8 of the plaint, there is a specific clause by which the plaintiff has pleaded cause of action. Perusal of the judgment of the trial court shows that the trial court has examined the merits of the cause of action that is pleaded and rejected the plaint. The learned trial Judge had gone to the extent of dealing with the pleadings of the plaintiff on merits and had recorded a finding on merits of the suit at the stage of deciding application under Order VII Rule 11 of CPC. It is well established principle of law that for rejecting a plaint under Order VII Rule 11, only the plaint as well as the supporting documents to the plaint are to be examined for the purpose of rejecting the plaint. The learned Trial Judge had rejected the plaint under clause (a) of the Rule 11 of Order VII of CPC for want of cause of action. However, the learned Judge instead of finding out whether there was any cause of action pleaded or not decided merits of the cause of action pleaded. In my view, such an approach while rejecting the plaint by applying provisions of Order VII Rule 11 of CPC is not permissible.

5. Perusal of the impugned judgment passed by the first appellate court shows that, the first appellate court has specifically recorded that on the basis of averments made in the written statement a plaint cannot be rejected under Order VII Rule 11 of CPC. The first appellate court has held that the cause of action would mean bundle of facts which give rights to the parties to approach the court. The first appellate court has held that the trial court has given judgment by presuming that the suit is only for injunction and not for declaration of the title. Hence, the first appellate court has arrived at a conclusion that it was necessary that the suit should have been decided after holding a proper trial. Hence, the first appellate court has set aside the order of the trial court rejecting the plaint under clause (a) of Rule 11 of Order VII of CPC and restored the suit to its original file.
6. Perusal of the plaint shows that the cause of action is pleaded by the plaintiff. With respect to the merits of the cause of action, the same cannot be gone into at the stage of Order VII Rule 11 of CPC. The merits with respect to the suit as well as the cause of action pleaded can be decided at appropriate stage of the trial and the merits of the cause of action cannot be a ground to reject the plaint.

7. I do not find any perversity in the findings and reasons given by the first appellate court. The first appellate court has rightly set aside the order rejecting the plaint and has restored the suit to its original stage. I do not find that there is any question of law involved in the second appeal. Hence, the second appeal is dismissed. There will be no order as to costs.
8. Needless to record that the objections raised by the appellant in the application under Order VII Rule 11 of CPC are decided only for the purpose of applicability of Order VII Rule 11 of CPC.
9. In view of the dismissal of the second appeal, civil application does not survive and same is dismissed.

[GAURI GODSE]
JUDGE