



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.209 OF 2023

Pradip s/o. Ramdas Dhage
Age 50 years, Occu. Teacher,
R/o. Her, Tq. Udgir, Dist. Latur
At present Z.P.School at Ambewadi,
Tq. Chakur, Dist. Latur

.. Applicant
(Original Defendant No.1)

Versus

1. Shridhar Shivkumar Sontakke
Age 41 years, Occu. Advocate,
R/o. Chakur, Tq. Chakur, Dist. Latur
2. Trimbak s/o. Pandurang Kamble
Age 70 years, Occu. Agril.,
R/o. Lakkad Jawalga,
Tq. Shirur Anantpal, Dist. Latur

.. Respondents
(R/1 original plaintiff and
R/2 original defendant No.2)

Mr. R. K. Ashtekar, Advocate for Applicant

CORAM : S. G. MEHARE, J.

DATE : 06-12-2023

PER COURT :-

1. Heard the learned counsel for the applicant.
2. The applicant was defendant No.1 in Regular Civil Suit No.147 of 2022. He had filed an application Exhibit-20 for rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure, praying in the form of dismissal of the plaintiff's suit at a premature stage. The applicant/defendant No.1 had put up his

defence that the suit plot and the plot he owned were different. He also insisted on considering the reply of respondent No.1/plaintiff. In reply to the application for dismissal of the suit at the premature stage, the plaintiff admitted that plot No.4 is in Tirumala Nagar and suit property No.43 is in Uday Nagar Colony, Tq. Udgir. He submits that on the basis of his admission, the suit was bad and could not be tried before the Court of First Instance. He also raised an objection that the suit is bad for the misjoinder of the cause of action and the parties.

3. He has argued that the Court of First Instance ignored the admission of the plaintiff in his reply and held that his application falls under Order VII, Rule 11 of the Code of Civil Procedure. He submitted that the application may be allowed.

4. The applicant's application below Exhibit-20 reveals that he had submitted that the suit plot and the plot of defendant No.1 were different. They have no concern with each other. In respect of the property, no cause of action arose against this defendant. So, the suit of the plaintiff was defective as per the law of misjoinder of parties; hence, the suit may kindly be dismissed for misjoinder of parties and misjoinder of the cause of action. Defendants No.1 and 2 were not necessary parties to the suit as they owned another plot.

5. Considering their case, the question is, can the suit be dismissed for misjoinder of parties at the preliminary stage instead of trying the suit? It reveals that the prayer was made to reject the plaint as there was no cause of action. If the plaint is to be rejected for no cause of action, the sole provision in the Code of Civil Procedure is Order VII, Rule 11(a).

6. It is apparent that the location of these two plots in two different localities has been brought by way of defence in the application. The cause of action is the bundle of facts. The learned Court of the first instance correctly held the plaint discloses a cause of action. The Court of First Instance has to have a full and comprehensive view of pleading. The averments made in the plaint or petition cannot be read out of context or in isolation. The plea in the written statement cannot be taken into consideration while deciding the application under Order VII, Rule 11 of the Code of Civil Procedure. This is a settled legal position regarding dealing with an application under Order VII, Rule 11 of the Code of Civil Procedure.

7. Admittedly, by way of defence, the present applicant claimed that the suit plot and the plot he owns are different and located in different localities. That is not a test to determine whether the plaint does not disclose the cause of action. The Court of the First Instance correctly held that the plaintiff and defendant

No.1 were claiming ownership and possession over the same plot but with different plot numbers. In such circumstances, a plea by defendant No.1 that the suit be dismissed on the grounds of misjoinder of parties is not acceptable. It has also been correctly observed that rejection of a plaint on the grounds of misjoinder is not inserted under Order VII, Rule 11 of the Code of Civil Procedure. The impugned order of the Court of First Instance is legal, correct and free from infirmity. There is no force in the revision.

8. The revision application stands dismissed at the admission stage.

(S. G. MEHARE)
JUDGE

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