

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.71 OF 2022

ILDA CLARA CHANDRA
FERNANDES AND ANR.

... Appellants

Versus

JOAO CAPISTRANO PRECIOSA
FERNANDES (SINCE DECEASED
THR LRS) AND 3 ORS.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Appellants.

Ms. Raagini Rao, Advocate for the Respondent Nos. 2(a) to 2(d).

CORAM: M. S. SONAK, J.

DATED : 5th JANUARY 2023

P.C.:

1. Heard Mr A. D. Bhobe, learned counsel for the Appellants, and Ms Raagini Rao, Advocate for Respondent Nos. 2(a) to 2(d).
2. The Appellants are the original Defendant Nos. 3 and 4 and Respondent Nos. 1 and 2 are the original Plaintiffs in Regular Civil Suit No. 141/2010/C.
3. The Plaintiffs and the Defendants are siblings. The Plaintiffs claimed to have purchased the suit property. Still, the Defendants assert that all the siblings inherited the suit property from their father, who was an agricultural tenant of the same. The Plaintiffs had filed a suit seeking a decree to partition the suit property.

4. The Appellants/Defendants applied for Order VII Rule 11(d) of the Civil Procedure Code by relying upon certain documents produced by them along with the said application. The Appellants contended that the suit property was inherited/co-ownership property and in the absence of a determination of precise shares, no suit for partition was maintainable. This application found favour with the trial Court, and the plaint was rejected by resorting to Order VII Rule 11(d) of the CPC.

5. The First Appellate Court, by elaborate judgment, has reversed the trial Court and restored the Regular Civil Suit No.141/2010/C to the file of the trial Court. Hence, this Second Appeal.

6. Mr Bhobe, learned counsel for the Appellants, submits that until and unless the precise shares of the co-owners were to be determined, there was no question of maintaining the suit for partition. He submits that the trial Court correctly appreciated this position, and the plaint was rejected. He submits that the First Appellate Court has made the impugned judgment and order without appreciating this position. Hence, this Second Appeal raises substantial questions of law.

7. Ms R. Rao submits that it is well settled that only averments in the plaint are relevant for considering an application under Order VII Rule 11(d) of the CPC. At that stage, the trial Court is precluded from looking into the defence of any of the defendants, much less relying upon some documents or material produced by the defendants along

with the application invoking the provisions of Order VII Rule 11(d) of CPC. She, therefore, submits that there was a patent illegality in the approach and the order made by the trial Court, which the First Appellate Court has now corrected. Based on all this, she submitted that no questions of law, much less substantial questions of law, arise in this appeal, and the same should be dismissed.

8. The rival contentions now fall for determination.

9. As was pointed out by Ms Rao, it is well settled that at the stage of consideration of an application under Order VII Rule 11(d) of the CPC, only statements in the plaint are relevant. At this stage, there is no question of adverting to the defendants' defence, much less referring to and relying upon some documents or material that the defendants may produce along with their application under Order VII Rule 11 of CPC. Accordingly, the Trial Court had erred in relying on the defence and even the defence documents at the stage of considering the application under Order 7 Rule 11 CPC. Therefore, the First Appellate Court correctly intervened.

10. The First Appellate Court correctly referred to the decision of the Hon'ble Supreme Court in *P. V. Guru Raj Reddy and others Vs P. Neeradha Reddy and others*¹. In this case, the Hon'ble Supreme Court has held that the power to reject the plaint under Order VII Rule 11 of the CPC is a drastic power conferred upon the Court to terminate a civil action at the threshold. Therefore, the conditions

¹ AIR 2015 SC 2485

precedent to the exercise of such power under Order VII Rule 11 are stringent and have been consistently held to be so by the Court. Only the averments in the plaint have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. *At the exercise of such power, the defendants' stand in the written statement or in the application for rejection of the plaint is wholly immaterial.* It is only if the averments in the plaint ex-facie do not disclose a cause of action or on a reading of the plaint, the suit appears to be barred under any law, can the plaint be rejected. In all other situations, the claims must be adjudicated on trial.

11. Applying the above principle to the facts of the present case, it is apparent that the Trial Court was not justified in exercising power under Order VII Rule 11 of CPC and rejecting the plaint. There were serious disputes between the parties, which would have to be adjudicated on a proper trial. Furthermore, there was no statement in the plaint based upon which the suit was barred under any law provisions. Therefore, the trial Court was not justified in referring to or relying upon the defence of the defendants or some material that the defendants chose to produce along with their application.

12. Accordingly, for all the above reasons, this appeal raises no substantial questions of law. The appeal is therefore dismissed. There shall, however, be no order for costs.

13. However, it is clarified that the observations made in the impugned judgment and order dated 20.02.2020, or for that matter,

the current order are only in the limited context of deciding whether the plaint could have been rejected under Order VII Rule 11 (d) of the CPC or not. Therefore, none of these observations need to be considered when the trial Court adjudicates the rival claim and decides the suit on its own merits.

14. With this clarification, this appeal is dismissed without any order for costs. Accordingly, the Civil Application No.83 of 2022 does not survive the disposal of the Second Appeal, and the same is disposed of accordingly.

M. S. SONAK, J.

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