

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1804 of 2019

State Bank of India Supervising Staff Co-operative Housing Society Limited,
A Society registered under the Bihar Co-operative Societies Registration Act,
having Registered No. 30 PAT of 1969 duly represented through its Secretary,
namely Sri Punya Deo Upadhyay, aged about 74 years, Son of Late Hari
Bansh Upadhyay, office situated at House No. 38, SBI Colony No. 5, Post
Office-Bahadurpur Housing Colony, District-Patna.

... .. Petitioner/s

Versus

1. Pravin Kumar Singh, Son of Late Awadh Nandan Singh, Resident of Kailash Bhawan, New Bahadurpur, Bazar Samiti Road, Police Station-Bahadurpur, District-Patna.
2. Arvind Kumar Singh, Son of Late Awadh Nandan Singh, Resident of Kailash Bhawan, New Bahadurpur, Bazar Samiti Road, Police Station-Bahadurpur, District-Patna.
3. Pramod Kumar Singh, Son of Late Awadh Nandan Singh, Resident of Kailash Bhawan, New Bahadurpur, Bazar Samiti Road, Police Station-Bahadurpur, District-Patna.
4. Dr. Ranjan Kumar Singh, Son of Late Hardeo Singh, Resident of Kailash Bhawan, New Bahadurpur, Bazar Samiti Road, Police Station-Bahadurpur, District-Patna.
5. Renu Kumari, Daughter of Late Hardeo Singh, Resident of Kailash Bhawan, New Bahadurpur, Bazar Samiti Road, Police Station-Bahadurpur, District-Patna.
6. Dr. Rohit Singh, Son of Late Dr. Manik Singh, Resident of Laxmi Nursing Home, Kankarbagh Road, Opposite Petrol Pump, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate Mr. Himanshu Shekhar, Advocate
For the Respondent/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate Mr. Anjani Kumar, Advocate Ms. Kumari Shreya, Advocate Mr. Yash Roohan, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 03-04-2024

The instant petition has been filed under Article 227
of the Constitution of India for setting aside the order dated



19.09.2019 passed by the learned Subordinate Judge-VIII, Patna in Title Suit No. 125 of 2017 whereby and whereunder the plaint of the aforesaid suit was rejected apart from other reliefs.

2. Case of the petitioner, shorn of unnecessary details, is that the plaintiff/ petitioner which is a duly registered cooperative society has filed Title Suit No. 125 of 2017. The plaintiff society acquired 123 *katha* of land of different plots from father of performa defendant through various registered sale deeds. The present suit is with regard to one of the colonies of the plaintiff society situated at Hanuman Nagar in which there is a plot bearing no. 900, measuring an area of 16 *katha* 3 *dhur* 16 *dhurki* which was purchased through three different deeds of sale dated 15.06.1982 and 16.06.1982. According to the lay out plan, the plots were allotted to the members of the society. In extreme east of the aforesaid land, 4 *katha* 16 *dhur* of land has been left by the society for construction of Community Hall and Shop for use and the benefit of its members. Respondent 1st set are said to be the principal defendants and it has been submitted that the principal defendants, in collusion and in connivance with each other, on 14.10.2014 in the midnight, uprooted the pillars and barbed wires from a portion of the land of the plaintiffs by illegal means which the plaintiff



have put for the purpose of construction of community hall. On 12.02.2016, the principal defendants forcibly and with the help of antisocial elements, ransacked and encroached upon the said land of the plaintiff which was left for the construction of community hall and kiosk. The plaintiff filed suit before the learned trial court seeking following relief(s):-

“(a). That on adjudication of the facts stated above, it be declared that the plaintiff have got valid right title over Schedule-1 land to which the plaintiff are entitled to its possession.

(b) That on grant of relief no.1 the Principal defendant be directed to remove the encroachment from Schedule-1 land otherwise it be removed through the process of the court at the cost of the principal defendants.

(c) That the principal defendants be restrained by an order of ad-interim injunction from selling, transferring, mortgaging or any manner changing physical feature of suit land detailed in Schedule-1 during pendency of this suit.

(d) That the cost of the suit may be awarded in the favour of the plaintiff.

(e) That any other relief to which the plaintiff are entitled be also granted.”

3. The principal defendants appeared and filed their written statements making a claim over the said land. Later on principal defendant no.1, respondent no.1 filed a petition on



01.09.2018 under Order VII Rule 11 of the Code of Civil Procedure (hereinafter 'the Code') for rejection of the plaint contending that the plaint did not disclose cause of action and proceeding with the trial would amount to misuse of the process of law. The plaintiff/petitioner filed a rejoinder on 15.09.2018. The learned subordinate court, after hearing the parties, passed an order on 19.09.2019 and rejected the plaint vide the impugned order.

4. Learned senior counsel for the petitioner, Mr. J.S. Arora, submitted that the learned subordinate court committed jurisdictional error by not appreciating the scope and purpose of Order VII Rule 11 of the Code. Learned subordinate court further committed jurisdictional error by not appreciating that hearing on the petition under Order VII Rule 11 of the Code would not be treated as pre-trial of the suit. Mr. Arora further submitted that the learned subordinate court has not appreciated and considered that in a proceeding under Order VII Rule 11 of the Code, the consideration of the plaint has to be made as a whole without excluding, adding or extracting any part thereof. Mr. Arora relied on a decision of the Hon'ble Supreme Court in the case of *Kum. Geetha Vs. Nanjundaswamy & Ors.*, reported in *AIR 2023 SC 5516*, on the proposition that test for exercising



the power under Order VII Rule 11 of the Code is that if the every averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. True test is first to read the plaint meaningfully and as a whole taking it to be true. Upon such reading, if the plaint discloses the cause of action, then the application for rejection of the plaint under Order VII Rule 11 of the Code must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected. The plaint cannot be rejected in part. On the same proposition, learned senior counsel also relied on a decision of the Hon'ble Supreme Court in the case of ***Biswanath Banik & Anr., Vs. Sulanga Bose & Ors.***, reported in ***AIR 2022 SC 1519***. Paragraph nos. 7.1 and 7.4 of this decision read as under:-

“7.1. From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.

7.4. While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original



owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of Delhi Motor Company (supra). However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC.”

5. Mr. Arora further submitted that as a matter of fact



there was no scope at all for rejection of the plaint. The impugned order does not show any acceptable or lawful ground for rejection of the plaint and the impugned order is completely perverse. Further, the petition filed under Order VII Rule 11 of the Code for rejection of the plaint does not speak about the plaint being barred under any law and it only says that the plaint does not disclose any cause of action and the said contention was accepted by the learned subordinate court. However, on going through the plaint, it would transpire that the plaint fully discloses cause of action. The learned subordinate court acted against the settled law that for the purposes of cause of action it is not only a sentence or any paragraph which is to be seen, rather the plaint is to be seen as a whole since the cause of action is a bundle of facts stated in the plaint and its implications arising therefrom. In this regard, Mr. Arora again relied on the decision of ***Biswanath Banik & Anr. (supra)***. Mr. Arora further submitted that as such the learned trial court was not justified in only concentrating on the point that plaintiff have not stated with regard to mutation since it has nothing to do with the cause of action. The question of title is to be seen on the basis of documents of title and, that too, at the stage of hearing and it is a settled law that mutation neither creates nor



takes away title to the property and as such the order impugned having passed on the ground of absence of mutation is completely perverse, misconceived and against the settled principles of law. In this regard, Mr. Arora referred to the decision of the Hon'ble Supreme Court in the case of ***Ajit Kaur @ Surjit Kaur Vs. Darshan Singh (Dead) Through Legal Representatives @ Ors.***, reported in ***(2019) 13 SCC 70***. Learned senior counsel also placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Bhimabai Mahadeo Kambekar (Dead) Through Legal Representative Vs. Arthur Import And Export Company & Ors.***, reported in ***(2019) 3 SCC 191***, on the point that mutation entries neither create nor extinguish title over property. Mutation entries do not have any presumptive value of title and they only enable persons, in whose favour entries have been made, to pay land revenue. Mr. Arora further submitted that the impugned order has created a piquant situation as a court of law has casually rejected a plaint without appreciating the impact and effect of its order which would be causing serious loss, trouble and harassment to a party whose plaint was not liable to be rejected at all.

6. Mr. Arora further submitted that in fact the impugned order is quite vague. From the impugned order, it



appears that the order has been passed by holding absence of cause of action in the plaint, but paragraph nos. 5 and 9 of the plaint clearly shows cause of action. Though bar of limitation has been mentioned in the impugned order but it is obvious that the order impugned has not been passed under Order VII Rule 11(d) of the Code. So far as absence of cause of action has been mentioned by the learned subordinate court, evidently, the same is error of record in the light of averments made in the plaint specially in paragraph nos. 3, 4 and 5 of the plaint. Learned senior counsel further submitted that the learned subordinate court has not expressed its opinion on other reliefs and cause of action and, hence it appears that the plaint has been rejected in part. But the same is not permissible and relied on the decision of the Hon'ble Supreme Court in the case of ***Madhav Prasad Agrawal & Anr. Vs. Axis Bank Limited & Anr.***, reported in ***(2019) 7 SCC 158***, wherein the Hon'ble Supreme Court has held that the relief of rejection of plaint in exercise of powers under Order VII Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s) i.e., the plaint has to be rejected as a whole or not at all, in exercise of such power. If the plaint survives against certain defendant(s) and/or properties Order VII Rule 11(d) of CPC has no application at all, and the



suit as a whole must proceed to trial. Thus, learned senior counsel submitted that the impugned order is not sustainable in the eye of law in the aforesaid facts and circumstances and the same needs to be set aside.

7. At the outset, learned counsel for respondent no.1, Mr. Jitendra Kishore Verma raised the issue of maintainability of the present petition. Mr. Verma submitted that rejection of plaint is covered under definition of decree under Section 2(2) of the Code and decree in Section 2(2) shall be deemed to include the rejection of the plaint and for this reason order of the learned trial court rejecting the plaint is subject to first appeal under Section 96 of the Code. In this regard, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Sayyed Ayaz Ali Vs. Prakash G. Goyal & Ors.*, reported in **(2021) 7 SCC 456**, wherein the Hon'ble Supreme Court held that against an order of trial court in rejecting the plaint being a decree in terms of Section 2(2) of the Code, proper remedy against such order rejecting the plaint is first appeal under Section 96 of the Code and writ petition under Article 227 of the Constitution of India against the order of rejecting the plaint was rightly dismissed by the High Court. On the same proposition, learned counsel also relied on a decision of a Division Bench of



this Court in the case of ***Meera Sinha Vs. Girja Sinha***, reported in ***2009 (1) PLJR 329***. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Shamsher Singh vs. Rajinder Prasad & Ors.***, reported in ***AIR 1973 SC 2384*** wherein it has been held that an order rejecting a plaint under Order VII Rule 11 of the Code is appealable as a decree and when the order is reversed in appeal, a second appeal would lie under Section 100 of the Code.

8. Mr. Verma further submitted that the plaintiff has not complied the provision of Order VII Rule 3 as the plaint does not contain description of property sufficiently to identify it. If the property cannot be identified, even if the suit is allowed, the decree would remain inexecutable. If Order VII Rule 3 of the Code is violated and particulars are absent, the plaint shall be rejected and in this regard, Mr. Verma relied on a decision of the Karnataka High Court in the case of ***Ambanna Vs. Ghanteappa*** reported in ***AIR 1999 Karnataka 421***. Learned counsel further submitted that description of property is vague and sufficient identification under Order VII Rule 3 of the Code is lacking and these facts are material to make out the cause of action. Learned counsel further submitted that the plaintiff has failed to point out the exact location of the suit property since



Plot No. 900 is a big plot of 1 acre 85 decimal. The plaintiff claimed to have purchased 16 *katha* 3 *dhur* 16 *dhurki* land, out of which 4 *katha* 16 *dhur* is said to be the suit property which was encroached but there is neither any identification of 16 *katha* 3 *dhur* 16 *dhurki* land nor 4 *katha* 16 *dhur* of land in Plot No. 900. Even the description given in Schedule-1 not identifiable with certainty. Since it is a suit for removal of encroachment, the same would be maintainable only when the suit property is clearly identifiable.

9. Mr. Verma reiterated his submission about suit property not sufficiently identifiable in terms of Order VII Rule 3 of the Code and also relied on the decision of Hon'ble Supreme Court in the case of ***Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust***, reported in (2012) 8 SCC 706 on the proposition that every fact which is necessary for the plaintiff to enable him to get a decree should be set out in clear terms. Mr. Verma further submitted that since cause of action is a bundle of facts which, taken with law applicable to them, gives plaintiff right to relief against defendant and when a suit has been filed on vague description of the property, it puts a question mark on the right of the plaintiff to sue and there will be no cause of



action. Mr. Verma further relied on the decision of the Hon'ble Supreme Court in the case of ***T. Arivandandam Vs. T.V. Satyapal & Anr.***, reported in ***AIR 1977 SC 2421*** on the proposition that if the suit does not disclose a clear right to sue on a meaningful reading of the plaint, the learned subordinate court should exercise its power under Order VII Rule 11 of the Code taking care to see that the grounds mentioned therein are fulfilled. Thus, learned counsel submitted that there is no perversity in the impugned order and learned subordinate court took a possible view of the matter. Mr. Verma further reiterated that the finding in the impugned order may be right or wrong but it is certainly not perverse.

10. Replying to the contention of the learned counsel for respondent no.1, learned senior counsel, Mr. J.S. Arora submitted that the present petition is maintainable under Order 227 of the Constitution of India since the order of the learned subordinate court is completely perverse and has been passed exceeding its jurisdiction. Mr. Arora relied on the decision of the Hon'ble Supreme Court in the case of ***B. Poondacha & Ors. vs. K.D. Ganapathi & Anr.***, reported in ***(2011) 12 SCC 600: AIR 2011 SC 1353***. Paragraph nos. 9 and 12 of this decision read as under:-



“9. In Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] the Court again examined the scope of the High Court's power under Article 227 of the Constitution and laid down the following proposition: (SCC pp. 331-32)

“Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to



be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.”

12. At this stage, we may also advert to the nature of relationship between a lawyer and his client, which is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfil all his obligations towards his client with care and act in good faith. Since the client entrusts the whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides i.e. the utmost good faith, integrity, fairness and loyalty.”

11. Learned senior counsel further submitted that it is the duty of the High Court to see that the learned trial court acts within its jurisdiction. The learned trial court has proceeded and recorded a finding about absence of cause of action which is clearly an error apparent on the face of record. It is against the facts as mentioned in the plaint. Though the power under Article 227 of the Constitution of India is discretionary, yet the same



has been vested with the High Court for the purpose of maintaining efficiency and smooth and orderly functioning of the machinery of justice in such a way as it does not bring it into any disrepute. This power is there to see that no grave injustice or gross failure of justice takes place by the orders of the subordinate court. Mr. Arora further submitted that exercise of supervisory jurisdiction is not available to correct mere errors of fact or law unless the following requirements are satisfied; (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of provisions of law and (ii) a grave injustice or gross failure of justice has occasioned thereby.

12. Mr. Arora further submitted that there cannot be any question over uncertainty in identifying the suit property. The suit property has been clearly mentioned in Schedule 1 of the plaint and if any issue ever arose, nothing has prevented the learned subordinate court to clarify this position. But no notice was issued to the plaintiff and no orders were passed directing the plaintiff to clarify the doubt over identity of the property or to ascertain the details of the suit property. Moreover, only the substance of the case of the plaintiff is to be given in the plaint under Order VI Rule 2 of the Code in concise form with regard



to the material facts. Mr. Arora further submitted that the learned trial court has clearly gone against the settled position of law with regard to mutation or payment of land revenue to the Government which in itself would not be a ground to deny the plaintiff's relief of title or possession. Mr. Arora further submitted that the learned subordinate court wrongly placed reliance on the decision of the Hon'ble Supreme Court in the case of *T. Arivandandam Vs. T.V. Satyapal & Anr.*, reported in *AIR 1977 SC 2421* and the said decision does not help the cause of the respondent as the Hon'ble Supreme Court has very clearly laid down that the subordinate court should have taken care to see that ground mentioned in Order VII Rule 11 of the Code are fulfilled before holding that the plaint does not disclose a right to sue. But in the present case, paragraph nos. 3, 4 and 5 of the plaint clearly bring out the grievance of the petitioner, his right to sue on the ground of his title based on registered sale deeds and also paragraph no. 9 shows when the cause of action for the same arose from time to time.

13. Mr. Arora further submitted that error committed by the learned subordinate court is apparent on the face of record when it mentioned about mutation not being in favour of the plaintiff whereas *Malguzari* receipts annexed with the plaint



contains *Jamabandi* (mutation) number and for this reason impugned order contains a wrong finding. The learned senior counsel also pointed out that three sets of written statements were filed on 18.08.2017, 02.11.2017 and 09.11.2017 but no interrogatories were filed regarding description of the suit property whereas the petition under Order VII Rule 11 of the Code has been filed only on 01.09.2018. The respondents denied the claim of the plaintiff and absence of cause of action only on the ground that the claim of the plaintiff can be restricted to a property which has *Jamabandi* No. 2331 and not for a plot of land which has its *Jamabandi* No. 2064. Obviously, the *Jamabandi* cannot be a ground for rejection of title of the plaintiff or for holding that the plaintiff has got no right to sue or no cause of action accrued to him.

14. Having regard to the rival submission of the parties and after going through the material available on record, the short question which arises in the *lis* is whether the present petition is maintainable and the impugned order is perverse and whether the plaintiff has got cause of action and a right to sue in the given facts and circumstances. Before considering the maintainability, it would be beneficial if the facts of the case and contents of the impugned order are revisited. The plaintiff



claims its title over Schedule-1 land and further sought direction to the principal defendant to remove the encroachment from Schedule-1 land apart from other reliefs.

15. Now Schedule-1 of the plaint reads as under:-

Schedule-1

“Description of land encroached by the principal defendants.

All that peace and parcel of land having total area 6534 Sq.ft. Equal to 4 Katha 16 dhur (approximately) have been mention north to south 163 ft. and east to west 40’1” which is part of Tauzi No. 272, Khata No. 363, Survy Plot No. 900 situated in Mauza-Sadikpur Jogi, Thana-Patrakar Nagar, District Patna which is bounded as follows:-

North : Sri Kaushal Kishore Singh

South : Renu Kumari

East : 90 ft. wide main Road

West : Society Plot no.9 and 10 intervened by 18 ft. wide Private Road for the members of society.”

16. The learned trial court recorded its finding about absence of cause of action on the following points:-

(i) There is no specific pleading about the sale deed by which the land was purchased.

(ii) No averment with regard to mutation of land in favour of the plaintiff and its *Jamabandi* Number.

(iii) Plaint is silent on the point of payment of land revenue to the Government.



(iv) Plaintiff had filed the suit with vague claim of land detailed in Schedule-1 of the plaint.

(v) It is a case of clever drafting creating illusion of cause of action as from the plaint it could not be ascertained whether the plaintiff has any cause of action or right to sue.

17. I am afraid the learned trial court missed the woods for trees. There is no dispute over the fact that three sale deeds were executed in favour of the plaintiff for purchase of Plot No. 900 measuring 16 *katha* 3 *dhur* 16 *dhurki* which is apparent from paragraph no.3 of the plaint. Whether the encroached area of 4 *katha* 16 *dhur* was purchased by three sale deeds or it was purchased through one or two sale deeds could have been easily clarified if the learned trial court was having any doubt on this point. When the documents are brought before the court as in this case the sale deeds, and there remains some doubt or vagueness over the instrument by which the suit property was purchased, the plaintiff could have been called upon to clarify the position.

18. So far as mutation of the land is concerned, lack of it would not result in denial of title. It is trite to say that the revenue records like *Khatiyan* entry or mutation/*Jamabandi* neither creates any right or extinguishes the same so far as title



is concerned. Merely on the ground that plaintiff failed to make any averment with regard to mutation of the land, allotment of *Jamabandi* Number of making payment of revenue rent to the Government would not make the entire case of the petitioner doubtful so as to cast a doubt over the claim of title and dispossession resulting in denial of right to sue. For absence of averment with regard to mutation/*Jamabandi*/payment of rent, the finding of the learned trial court about plaintiff not having any right to sue could not be said proper assessment of the facts and law.

19. So far as description of suit land is concerned, it has been mentioned by the learned trial court in the impugned order that the suit has been filed with vague claim of land detailed in Schedule-1 of the plaint. This aspect of the matter was vehemently contended by the learned counsel appearing on behalf of the respondents/principal defendants that the suit property was not sufficiently identifiable in terms of Order VII Rule 3 of the Code.

20. Again coming back to Schedule-1 of the plaint, it is amply clear that details of the properties with boundaries have been mentioned which makes the suit property quite identifiable and if it was felt by the learned trial court that the description



was vague, it could have pointed out to the plaintiff in clear terms to clarify the position with regard to the suit land.

21. It has also come on record that a *Malguzari* receipt was filed showing *Jamabandi* No. 2331 and this fact came in the written statement of the principal defendants wherein it has been clearly stated that the claim of the plaintiff should be restricted to *Jamabandi* No. 2331. This means a *malguzari* receipt of *Jamabandi* No. 2331 was on record along with the plaint. While considering Order VII Rule 11 of the Code, the learned trial court was bound to look into the averment made in the plaint as has been held in the decision of the Hon'ble Supreme Court in the case of ***Saleem Bhai & Ors. Vs. State of Maharashtra & Ors., reported in (2003) 1 SCC 557***. If the learned trial court overlooked this fact, certainly it has committed an error on record. Recording any finding without considering the material available on record makes such finding perverse and not sustainable. Discussing various decisions of the Hon'ble Apex Court, in the case of ***Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust, reported in (2012) 8 SCC 706***, the Hon'ble Supreme Court has observed that cause of action is a bundle of facts which taken with law applicable to



them gives plaintiff right to relief against the defendant. It has also been held in the same case that every fact which is necessary for plaintiff to prove to enable him to get decree should be set out in clear terms. But the learned trial court missed this fact about cause of action and acted contrary to the provisions of law.

22. Order VII Rule 11 of the Code provides 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 returned 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 provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case



may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

23. The plaint could be rejected when it does not disclose cause of action. The Hon’ble Supreme Court has held in a catena of decisions and recently in the case of ***Eldeco Housing And Industries Limited Vs. Ashok Vidyarthi And Ors.***, reported in ***(2023) SSC OnLine SC 1612*** that for rejection of plaint, only the plaint as a whole and documents annexed with it are to be considered to arrive at a finding that it does not disclose a cause of action or that it is barred by any law.

24. In the light of discussion made hereinabove, I do not think it is a case of clever drafting giving an illusion of cause of action rather it appears to be a case of poor drafting which resulted in the learned trial court recording its finding about absence of cause of action and absence of right to sue to the plaintiff.

25. In the light of aforesaid facts and circumstances, considering the perversity in the impugned order, I am of the considered opinion that the present petition is maintainable under Article 227 of the Constitution of India and reliance could be placed on the decision of the Hon’ble Supreme Court in ***B. Poondacha & Ors.*** (supra).

26. Further, in view of the discussion made so far, the



authorities cited by the learned counsel for respondent no.1 are not of much help to the cause of the respondent no.1.

27. Therefore, I do not find the impugned order to be sustainable in the light of discussion made and considering the facts and circumstance, the impugned order suffers from jurisdictional error and, hence the same is set aside.

28. As a result, the instant petition stands allowed.

29. This Court has not made any observation on the merits of the case and whatever has been said hereinabove is only for the purposes of disposal of the present petition. However, the parties are at liberty to raise all issues before the learned trial court which would proceed with the matter uninfluenced by any of the observations.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	04.03.2024
Uploading Date	03.04.2024
Transmission Date	NA

