

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL APPLICATION
APPELLATE SIDE

Present:

Hon'ble Justice Shampa Sarkar

C.O. 3929 of 2022

Sri Abhijit Joy Ghosh

Vs.

Sri Amit Kumar Ghosh

For the petitioner : Mr. Sayantan Bose,
Mr. Shounak Mukhopadhyay,
Mr. Sattik Rout.

For the opposite party : Mr. Ayan Banerjee,
Mr. Dhiman Banerjee,

Hearing concluded on: 27.02.2024

Judgment on: 07.05.2024

Shampa Sarkar, J.:-

1. An order dated September 27, 2022, passed by the learned Civil Judge (Senior Division) 2nd Court, at Barasat, in Title Suit No.636 of 2022, is impugned. The learned court rejected an application filed by the defendant/petitioner under Order 7 Rule 11 of the Code of Civil Procedure. The other part of the order rejecting an application under Section 151 of the Code of Civil Procedure, is not the subject matter of this proceeding.

2. The defendant/petitioner prayed for rejection of the plaint on the ground that the plaint did not disclose a cause of action. That the suit was not maintainable under Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as the said Act). That the plaintiff/opposite party did not have a preferential right in terms of the said provisions of law. No cause of action had arisen, leading to the filing of the suit. The share of the

plaintiff/opposite party was never denied by the defendant/petitioner as would be evident from the averments in the plaint. As such, a suit for declaration and permanent injunction would not be maintainable. The plaintiff/opposite party could not prevent the defendant/petitioner, from disposing of his undivided share in the property, by invoking Section 22 of the said Act.

3. The plaintiff/opposite party filed an objection to the said application, inter alia, stating that the suit property was inherited by the plaintiff and the defendant from the original lessee Ajit Kumar Ghosh. The plaintiff and the defendant had half share each in the property. The plaintiff was a class-I heir under the Hindu Successions Act, 1956 and entitled to the benefit of Section 22 of the said Act. The plaintiff/opposite party further urged that he was also entitled to get a declaration of his status as the legal heir of the deceased lessee Ajit Kumar Ghosh. The provisions of Section 4 of the Partition Act, 1893, and Section 44 of the Transfer of Property Act, 1882, would also be applicable for the protection of his right.

4. Upon hearing the parties, the learned court held that the cause of action as pleaded, was not illusory. The averments made in the plaint, taken as a whole, disclosed that the plaintiff and the defendant were joint owners. They had been enjoying the property. Both were in possession of the property. The property had not been partitioned. The shares were not demarcated. Cause of action for filing the suit, had been disclosed. Cause of action being a bundle of facts, could be deciphered from the totality of the plaint and not from a single paragraph. Averments in the plaint ought to be looked into in its entirety in order to assess whether the plaint disclosed a

cause of action or not. Elaborate enquiry on doubtful and complicated question of fact and law was not required to be embarked upon, while adjudicating an application under Order 7 Rule 11 of the Code of Civil Procedure. The order of rejection of the application has been challenged before this Court

5. Mr. Sayantan Bose, learned Advocate appearing on behalf of the petitioner/defendant submitted that the preferential right under Section 22 of the said Act, would not be applicable in the facts of this case as the defendant was the heir of a co-heir and not a co-heir of the plaintiff. The plaintiff and the deceased father of the defendant were co-heirs (class-I heirs of the original lessee Ajit Kumar Ghosh). Such provision of law would have been applicable if the petitioner's father wanted to sell his share. Upon the death of the petitioner's father, the plaintiff and the petitioner did not become co-heirs. Plaintiff and Anindya (since deceased) were class-I heirs of Dr. Ajit Kumar Ghosh, the original lessee of the property. Upon death of Dr. Ajit Kumar Ghosh, Anindya and the plaintiff inherited the property as co-heirs and co-sharers. Upon death of Anindya, his share devolved upon the petitioner, who was not one of the class-I heirs of the original lessee and any sale proposed by defendant/petitioner could not be preempted by importing the provisions of Section 22 of the said Act.

6. Mr. Bose further contended that by a letter, the plaintiff was informed that the defendant wanted to sell the property. In any event, assuming that a preemptive right was sought to be exercised by the plaintiff, the plaintiff did not make any offer to buy out the property, which was one

of the ingredients for attraction of Section 22 of the said Act. There was no such averment in the plaint.

7. It was further contended by Mr. Bose that the plaint also disclosed that the defendant had intimated the plaintiff that the lease deed contained 17 clauses and did prohibit such transfer. According to Mr. Bose, although the lease deed disclosed that one of the joint lessees could sell their portion to the other joint-lessee, the plaint did not disclose at all that the other co-lessee was interested to purchase the property. Thus, the suit was a frivolous one and was filed only to restrain the defendant from rightfully enjoying his property and transferring the same as per his choice.

8. Mr. Ayan Banerjee, learned Advocate appearing on behalf of the plaintiff/opposite party submitted that it was well settled that an application for rejection of the plaint had to be considered by treating the averments in the plaint to be true. The court could not look into either the defence case or any other document beyond what was relied upon in the plaint. In order to ascertain whether the cause of action was illusory or not, a meaningful reading of the plaint would be necessary. A senior citizen was claiming protection against dispossession from his family dwelling house and he tried to preserve the property, by keeping the same within the family. This could not be termed as an illusory cause of action. A court should not reject the plaint merely because there was a doubt as to whether the suit was maintainable or not. If a semblance of a cause of action was available from a plain reading of the plaint, the question of rejection of the same, would not arise. If some of the reliefs claimed in the plaint were not maintainable, the

plaint could not be rejected as a whole and the suit should proceed on all issues.

9. Mr. Banerjee urged that applicability of Section 22 of Hindu Succession Act, 1956, would be adjudicated only at the time of trial. The learned trial judge had rightly rejected the petitioner's application seeking rejection of the plaint. Interpretation of Section 22 of the Hindu Succession Act, 1956, would require a full-fledged trial. Relying on Paragraphs 13 and 15 of the plaint, Mr. Banerjee pointed out that there were pleadings to the effect that the intention of the defendant to transfer the undivided half share, was contrary to the lease deed. The maintainability of the suit under Section 22 of the said Act, had been categorically pleaded. The disturbance created by the proposed buyers, who would visit the property, had also been elaborated. Under such circumstances, the plaint could not be rejected without trial on evidence.

10. Considered the rival contentions. There is no dispute with the proposition of law that while considering an application for rejection of the plaint, the court has to decide whether a meaningful reading of the entire plaint would lead to the inevitable conclusion that the suit was not maintainable, as it did not disclose any cause of action.

11. At the outset, it is relevant to mention that the principles governing the law of rejection of the plaint has been rightly appreciated by the learned court. However, whether such principles were correctly applied in the instant case, is germane for consideration by this Court.

12. The defendant/petitioner, is not a class-I heir of the original lessee, through whom both the plaintiff and defendant claim to have joint rights in

the property. The petitioner is the son of the class-I heir and he inherited the property upon the death of (Anindya Kumar Ghosh). Anindya was the class-I heir of the original lessee, Ajit Kumar Ghosh. If the proposal for sale was at the instance of the father of the petitioner (Anindya), the plaintiff would have had a preemptive right under Section 22 of the said Act, but such right would not follow any proposal for transfer by the heir of the class-I heir of the deceased.

13. The plaintiff filed the suit for declaration and injunction. The averments in the plaint need to be considered. Paragraph 2 of the plaint discloses that the plaintiff and the defendant became joint lessees in respect of the Salt Lake property, by inheritance. Paragraph 3 discloses that the father of the plaintiff and the grand-father of the defendant, namely, Ajit Kumar Ghosh, was the original lessee for 999 years, on the basis of the indenture of lease executed on April 19, 1973 and registered on May 5, 1973. Ajit Kumar Ghosh received possession thereof. Paragraphs 5 to 7 disclose that the father of the plaintiff and grandfather of the petitioner constructed a building as per the sanctioned plan and were living thereat with his wife and two sons, namely, the plaintiff and Anindya Kumar Ghosh (since deceased). The wife of Dr. Ajit Kumar Ghosh, pre-deceased him. Upon death of Ajit Kumar Ghosh, the property devolved upon the plaintiff and Anindya Kumar Ghosh (since deceased) who was the father of the petitioner, each having one half share. Anindya Kumar Ghosh (class-I heir of the plaintiff) and his wife subsequently died, leaving behind the petitioner, as their sole legal heir. One half share in the property, devolved upon the petitioner. In paragraph 8, it has been stated that the plaintiff and the

petitioner, by way of inheritance became joint owners of the suit property and their names were jointly mutated in the records of the Urban Development and Municipal Affairs Department, Government of West Bengal. The property had been recorded in the name of the plaintiff and Anindya, upon demise of Dr. Ajit Kumar Ghosh. The plaintiff further averred that definition of the term 'lessee' would include heirs, executors, administrators and representatives of the original lessee. In paragraph 13, it has been stated that the defendant by a letter dated June 30, 2022, informed the plaintiff that he intended to transfer his undivided portion as the 17 clauses lease deed, did not prohibit such transfer. It was further stated in the plaint that the lease deed also provided that if the lease was granted in favour of two or more individuals jointly, any one of the joint lessees would have the right to transfer his or her share to the other co-sharer or co-sharers. That Ajit Kumar Ghosh left behind an 'Ichapatra', which could be termed as a family settlement. Paragraphs 19 to 21 deal with the cause of action to file the suit. It has been also averred that the proposed buyers were visiting the suit property, which was causing inconvenience to the plaintiff and his family. Finding no other alternative, the suit was filed. The plea was that Section 22 of the said Act conferred a preferential right upon the plaintiff to purchase the portion of the house sought to be sold by the petitioner/defendant.

14. The plaint, read as a whole, clearly indicates that the plaintiff as a co-sharer of the property seeks to exert his right by invoking Section 22 of the Hindu Succession Act, 1956, against his nephew (heir of the class-I heir).

15. It is an admitted position that the plaintiff and the father of defendant were the class-I heirs of Dr. Ajit Kumar Ghosh. Anindya Ghosh, late father of the petitioner did not try to sell the property to a third party. Thus, no right had accrued in favour of the plaintiff under the provisions of Section 22 of the said Act, to prevent the sale by the defendant/petitioner. The right of the plaintiff/opposite party, to pre-empt sale of any undivided portion of the property ceased upon death of Anindya. The petitioner was not a class-I heir of Late Ajit Kumar Ghosh along with the plaintiff. Such right could not be pressed into action against the heir of the class-I heir of Ajit Kumar Ghosh, the original lessee. The petitioner/defendant did not inherit his share as a son of a pre-deceased son of Ajit Kumar Ghosh.

16. The provisions of Section 22 of the Hindu Succession Act, 1956 are quoted below:-

“22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heir proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

17. The section intends to give preferential right to class-I heirs of the owner of the immovable property, to acquire the property of other class-I heirs. The object of preventing fragmentation of a dwelling house by introduction of strangers in the family house and the estate, led to the incorporation of such provision. If the interest in any immovable property of an intestate or in any business carried on by him or her, devolved upon two or more heirs specified in class I of the Schedule and any one of such heirs proposed to transfer his or her interest in the property or the business, the other heirs would have a preferential right to acquire the interest proposed to be transferred. The consideration for acquisition of such interest could be agreed upon between those the two heirs and in the absence of any agreement, the matter had to be decided by the Court on an application being made to it in this behalf. If there were two or more heirs specified in class-I of the Schedule proposing to acquire any interest under this section, the heir who offered the highest consideration for the transfer, would be preferred. Clearly, in this case, the preferential right was not being exercised by a class-I heir of the petitioner. Neither did the plaintiff plead that he wanted to purchase the share of the petitioner at a consideration to be fixed by the Court.

18. Moreover, the plaintiff talks about a 'Ichapatra', but does not talk about demarcation/partition of the property on the basis of such 'Ichapatra'. The pleading is incomplete and inadequate. The other paragraphs clearly indicate that the plaintiff had accepted the petitioner to be a co-lessee, having his undivided share in the property, along with the plaintiff after the demise of one of the class-I heirs (Anindya) of the original lessee Dr. Ajit

Kumar Ghosh. Although the lease deed has been mentioned, but there is no pleading as to which clause of the deed would bar the defendant from transferring his undivided portion.

19. The plaint discloses a letter written by the petitioner to the plaintiff. Such letter indicates that the petitioner had intimated the plaintiff about his desire to sell the undivided portion in the property. The petitioner further intimated the plaintiff that the lease deed did not prohibit the petitioner from transferring his portion. No contrary pleadings appear from a reading of the plaint. Only by mentioning an 'Ichapatra' and the lease deed, a cause of action to sue could not be established. The pleadings are vague and insufficient. Without proper pleadings as to how the right to sue accrued, the suit is not maintainable. Incorporation of such facts in a casual and cryptic manner was only to create an illusion of a cause of action. This is a case of clever drafting.

20. In the decision of ***G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors. decided in Civil Appeal No.- 2737 of 2023.*** The Hon'ble Apex Court held as follows:-

"6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

21. Thus, this Court perused the documents disclosed in the plaint. The lease deed dated April 19, 1973, which is a 17-clause lease deed does not contain any prohibitory clause. This court has also perused the petitioner's

letter dated June 30, 2022, in which the petitioner disclosed about his desire to sell his undivided portion of the property as he was unable to maintain the same from Bengaluru. The petitioner stated that the sale was neither barred by law nor under the lease deed. He sought for the cooperation and support from the plaintiff. The petitioner had alleged that the plaintiff, in a high-handed manner, claimed to be the owner of the entire property and had blocked the ingress and egress to the ground floor portion which was being enjoyed by the petitioner. The 'Ichapatra' mentioned in the plaint was also perused and it does not indicate that there was a bar to the transfer of the undivided portion. Rather, the 'Ichapatra' indicates that the plaintiff and the father of the petitioner who were the sons of the original lessee would jointly enjoy the property. The same also deals with the settlement of the movables and money, belonging to the deceased Dr. Ajit Kumar Ghosh. Even if such documents are kept aside, the plaint does not disclose how the plaintiff had acquired the right to sue. By merely referring to Section 22 of the said Act, the lease deed and 'Ichapatra', the cause of action could not be established. The plaint should have disclosed how the plaintiff's right had been denied by the petitioner and how the plaintiff acquired a right to sue.

22. In the decision of *Dahiben v. Arvinbhai Kalyanji Bhanusali*, reported in **(2020) 7 SCC 366**, the Hon'ble Apex Court, upon consideration of the plaint and documents relied upon in the plaint, arrived at the conclusion that the suit was meritless, vexatious and did not disclose any right to sue. The suit was an abuse of the process of court.

23. The present case is a classic example of clever drafting. The plaintiff attempted to create an illusory cause of action in order to bring the suit within the purview of Section 22 of the said Act. Remedy under Order 7 Rule 11 of the Code of Civil Procedure, is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence and without conducting a trial on the basis of evidence adduced, if the court is satisfied that the proceeding should be terminated on any of the grounds contained in the provision. In this case, the plaint does not disclose a cause of action to maintain the suit against the defendant/petitioner. An inapplicable provision of law has been pressed into action. The suit was an attempt of the plaintiff/co-owner, to prevent outsiders from coming into the dwelling house which was a joint property. Passing reference to the lease deed and the 'Ichapatra' was intended to create an illusory cause of action.

24. In the decision of ***Dahiben (supra)***, the Hon'ble Apex Court held as follows:-

"24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court."

25. In ***Azhar Hossin vs. Rajib Gandhi***, reported in ***1986 Supp SCC 315***, the Hon'ble Apex Court held that the whole purpose of conferment of powers under the said section, was to ensure that a litigation which was meaningless and bound to prove abortive, should not be permitted to

continue as it would waste judicial time. The Hon'ble Apex Court held as follows :-

“12...The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

26. Order 7 Rule 11 of the Code, casts a duty upon the court to determine whether the plaint discloses a cause of action. I find that the defendant desired to sell the property as the class-I heir of Anindya and he was not restricted from making such transfer under the provisions of Section 22 of the said Act. The preferential right of the plaintiff would not arise in the case in hand as Anindya was not proposing to sell his undivided share to the third party. The other class-I heir of the original lessee who was the co-heir of the plaintiff, was not alive.

27. In the decision of ***Ganeshappa (since dead by his Lrs) and Ors. vs. Krishnamma and Ors.***, reported in ***AIR 2005 Kant 160***, it had been held by the Karnataka High Court :-

“...5. The provisions of the Section declare that when the interest in the immovable property devolved by intestate succession upon two or more heirs specified in Class I of the schedule then it is between the Class I heirs inter se they have right of preemption. In the present case, the succession for the first time opened after the death of propositus Venkataramanappa. His sons as Class-I heirs succeeded to the property. The first defendant did not succeed to the property as Class-I heir of Venkataramanappa along with the plaintiff and his brothers. The first defendant succeeded to the property only after the death of her husband, who is the brother of the plaintiff. The plaintiff could have invoked right of preemption, if Chinnappa his brother had sold the property. But in the instant case, it is the widow of Chinnappa, who inheriting the property after the death of her

husband sells the property. Therefore, in between the plaintiff and first defendant the question of right of preemption would not arise and provisions of Section 22 of the Hindu Succession Act do not apply. In that view, the claims of right of preemption is untenable. The finding of the Trial Court is sound and proper. Accordingly, the appeal dismissed.”

28. In *Kamal Goel vs. Purshotam Dass (deceased by L.Rs.) and others*

reported *in AIR 1999 P& H 254*, it was held as follows:-

“**10.** Chalti Devi filed the suit claiming a preferential right to purchase the property under Section 22 of the Hindu Succession Act which reads as follows :-

‘Where, after the commencement of this Act, interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolve upon two or more heirs” specified in Class-I of the Schedule and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.’

11. From a reading of above Section, it is clear that it confers a right on Class-I heir only to seek the transfer of property in his or her name when the other co-heir proposes to sell the property. This Section is also applicable to the interest already transferred, but the intention of enacting the Section is to see that the property will remain in the hands of co-heirs only and to prevent the] strangers from acquiring any interest of the coheir. Further it is clear that the provisions of this Section are confined only to Class-I heirs specified in the Schedule. It is only a personal right given to one or other of the co-heirs. That right is neither transferable nor inheritable. In such cases, the common law maxim *actio personalis moritur-cum persona* (a personal right of action dies with the person).

12. Admittedly, Chalti Devi died during the pendency of the suit. Therefore, the right to have the property transferred in her name and to get the sale deed executed by the defendants in favour of the appellant also ceased to exist. Her other son namely the 1st respondent cannot have any right to continue the suit since he has no right and the right of his mother Chalti Devi cannot be inherited by him. It is further to be noticed that all other Class-I heirs except Chalti Devi sold their share of the property to the appellant. When Chalti Devi died before a decree was passed in her favour, the right to continue the suit will not survive. Since the right conferred under Section 22 of the Succession Act is a personal one, it is extinguished by the death of Chalti Devi. Therefore, the suit filed by her stands abated as she died before the adjudication of her right.”

29. In the decision of ***Balasaheb Annasaheb Jasud vs. Anirduha Vilas Kurbetti and Ors.*** reported in **2017 (3) AKR 329**, it was decided as follows:-

“**18.** Question is whether the plaintiff can exercise preferential right under Section 22 of Hindu Succession Act. The pedigree shows that plaintiff is the son of one Annasaheb, who is the brother of Tukaram. If Section 22 (1) of Hindu Succession Act is read, it becomes very clear that for a person to claim preferential right, the interest in any immovable property of an intestate should devolve on two or more heirs specified in Class - I of the schedule and anyone of such heirs should propose to transfer his or her interest in the property. Even this preferential right can be claimed after the transfer of the property subject to limitation. In this case, the Class I heirs of the propositus Vittal Jasud are Tukaram, Annasaheb and Housabai. The wife and son of Tukaram sold away their undivided share to defendant No.1 by executing sale deed on 17.10.1984. On that date, the plaintiff's father Annasaheb was very much alive. He did not question the sale. Supposing that Tukaram had sold away the property, Annasaheb being Class-I heir, could have questioned it. Here, neither the plaintiff nor the defendants 2 and 3 do come within the purview of Class-I heirs of Vittal Jasud. Even if plaintiff succeeds to the property of his father by intestate succession, he gets no right under Section 22 of the Hindu Succession Act; he doesn't step into the shoes of his father to call himself as Class-I heir. In a situation like this, it is useful to place reliance upon the judgment of this Court in the case of Ganeshappa (deceased by LRs) V/s. Krishnamma and others (AIR 2005 KAR 160). In this decision it is held as below:-

‘4. The provision of the Section declare that when the interest in the immovable property devolved by intestate succession upon two or more heirs specified in Class I of the schedule then it is between the Class I heirs inter se they have right of pre-emption. In the present case, the succession for the first time opened after the death of propositus Venkataramanappa. His sons as Class-I heirs succeeded to the property. The first defendant did not succeed to the property as Class-I heir of Venkataramanappa along with the plaintiff and his brothers. The first defendant succeeded to the property only after the death of her husband, who is the brother of the plaintiff. The plaintiff could have invoked right of pre-emption, if Chinnappa his brother had sold the property. But in the instant case, it is the widow of Chinnappa, who inheriting the property after the death of her husband sells the property. Therefore, in between the plaintiff and first defendant the question of right of pre-emption would not arise and provisions of Section 22 of the Hindu Succession Act do not apply. In that view, the claim of right of pre-emption is untenable. The finding of the Trial Court is sound and proper. Accordingly, the appeal dismissed.”

30. The pleadings indicate that the plaintiff's sole purpose was to protect his privacy, secrecy and peaceful living in the joint dwelling house. Section 44 of the Transfer of Property Act takes care of such a situation. The plaintiff is always at liberty to exercise right under Section 44 of the said Act, when the situation, so arises.

31. Section 44 of the Transfer of Property Act, 1882, is set out below :-

44. Transfer by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

32. Another remedy is also available under Section 4 of the Partition Act. If the transfer takes place and the third party tries to partition the undivided portion of the property upon demarcation of the same, in such a situation, the plaintiff has the preferential right under Section 4 of the Partition Act.

33. The provision of Section 4 of the Partition Act, is quoted below :-

4. Partition suit by transferee of share in dwelling-house.—

(1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

34. In ***Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors.***, reported in **(2005) 10 SCC 51**, it was held that cause of action meant every fact which if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In the case in hand, the plaint case is based on Section 22 of the Hindu Succession Act, which is not applicable. A passing reference to a deed of lease and a bar in the lease of deed, which has not been spelt out at all in the plaint, was only for the purpose of creating a semblance of a cause of action. It was a camouflage.

35. In ***T. Arivandandam v. T.V. Satyapal and Anr.*** reported in **(1977) 4 SCC 467**, the Hon'ble Apex Court held that a meaningful reading and not a formal reading of the plaint, should be undertaken by the court in order to understand whether the suit was vexatious or meritless. This court is satisfied that a meaningful reading of the plaint would show that there was no cause of action to file the suit and the purpose of filing the suit was to prevent the petitioner from dealing with his property. This is a meritless suit and the plaint is liable to be rejected.

36. This is a case where clever drafting has created an illusion of a cause of action and deserves to be nipped in the bud.

37. In the matter of ***T. Arivandandam (supra)***, the Hon'ble Apex Court held as follows:-

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly 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 Or. VII r. 11 C.P.C. 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 X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."

38. In *ITC Ltd. vs. Debts Recovery Appellate Tribunal and Ors.*, reported in **(1998) 2 SCC 70**, it was held that law could not permit clever drafting which created an illusion of a cause of action. A clear right to sue should be made out in the plaint. Bogus litigations should end at the earliest stage. The court must be vigilant against any camouflage or suppression and determine whether the litigation was utterly vexatious and in abuse of the process of court.

39. In the decision of *Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors.*, reported in **(2006) 3 SCC 100**, the Hon'ble Apex Court held that suppression of material facts would be a ground for rejection of the plaint and the intention of the plaintiff should be gathered from the tenor and terms of the pleadings. Relevant paragraphs are quoted below:-

11. Under Order 7 Rule 11 of the Code, the court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order 7 Rule 11 of the Code would be on consideration of the principles laid down by this Court. In *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467] this Court has held 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, the court should exercise its power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order 7 Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order 6 Rule 16 to strike out the paragraphs in the absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In *ITC 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 by the defendant under Order 7 Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In *Saleem Bhai v. State of Maharashtra* [(2003) 1 SCC 557] this Court has held that the trial court can exercise its powers under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property v. State Bank of India Staff Assn.* [(2005) 7 SCC 510] this Court has culled out the legal ambit of Rule 11 of Order 7 of the Code in these words: (SCC p. 516, para 19)

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

40. In this case, the plaintiff has intentionally omitted to mention the contents of the lease deed and the Ichapatra'. In the decision of **K. Akbar**

Ali vs. K. Umar Khan & Ors. reported in **2021 (2) ICC 15 (S.C.)**, the Hon'ble Apex Court held as follows:-

5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

6. In this case, the Petitioner/Plaintiff has, as stated above, asserted that the Power of Attorney was given to Mr. Zahir Ali to maintain and administer the suit property. There is no assertion in the plaint that the Power of Attorney authorized Mr. Zahir Ali to execute any pre-emption agreement.

7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC v. Debts Recovery Appellate Tribunal reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the Power of Attorney given by the first Defendant to Mr. Zahir Ali.”

41. In the decision of **Ramisetty Venkatanna and Another vs Nasyam Jamal Saheb and Others** reported in **2023 SCC Online SC 521**, the Honble Apex Court held as follows:-

“25. In the case of *Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

“11. In *ITC Ltd. v. Debts Recovery Appellate Tribunal* [ITC 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 [(1977) 4 SCC 467].)”

42. In view of the discussions above, the plaintiff did not have a right to sue under Section 22 of the said Act. The plaint does not disclose any cause of action to sue. The plaintiff also did not disclose whether he would exercise his right by buying the property. Sub-Section(2) of of Section 22 of the Act require such positive averment and action. The suit was an attempt to prevent the petitioner from exercising his right over the property and an abuse of the process of Court.

43. The continuation of the suit would amount to misuse of judicial time.

44. The right of the plaintiff to prevent a third party from entering into the dwelling house and to preserve privacy is protected by other laws, which can be exercised at the correct stage, by initiating appropriate proceedings.

45. The revisional application is allowed. The plaint is rejected.

46. The order rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, is set aside.

47. There shall be no order as to costs.

48. Parties are to act on the basis of the server copy of this judgment.

(Shampa Sarkar, J.)