

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 6 OF 2024

1. Mr. Avinash Tanu Govekar,
son of late Tanu Govekar,
48 of age, married business,
Indian National, and his wife,

2. Mrs. Sunanda A. Govekar,
wife of Avinash Tanu Govekar,
aged 44 years, married, business,
Indian National, both r/o. H.No. 452,
Dabholwada, Chapora, Bardez-Goa.

3. Mrs. Bhimarai Tanu Govekar,
w/o. Late Tanu Govekar, 90 years of
age, married, housewife, Indian National,

4. Mrs. Avita Tanu Govekar
@Avita Tanu Govenkar,
Wife of late Ajit Gajanan Naik,
50 years of age, married, housewife,
Indian National,

5. Mrs. Savashni Subhash Govekar,
Wife of Subhash Tanu Govekar,
58 years of age, married, business,
Indian National,

6. Mr. Ganapata Tanu Govekar,
54 years of age, married, business,
Indian National, all r/o. H. No. 452,
Dabholwada, Chapora, Bardez-Goa.
r/o. H. No. 587/2, Small Vagator,
Bardez, Goa.

7. Mrs. Ranja G. Govekar,
Wife of Ganapata T. Govekar,
57 of age, married, housewife,
Indian National, r/o. H. No. 587/2,

Small Vagator, Bardez, Goa.

8. Mr. Mahabaleshwar @ Mahableswar
Tanu Govenkar, Son of late Tanu Govekar,
Aged 47 years, married, business,
Indian National and his wife,

9. Mrs. Esperanca Caetana C. Fernandes,
Wife of Mahableswar Tanu Govenkar,
Aged 45 years, married, business,
Indian National, both r/o. H. No. 452,
Dabholwada, Chapora, Bardez-Goa.

10. Mr. Devanand Tanu Govenkar,
Son of late Tanu Govenkar,
Aged 35 years, married, service,
Indian National and his wife,

11. Mrs. Divya D. Govekar,
Wife of Devanand Tanu Govekar,
36 Years old, Major of age, married,
housewife, Indian National,
both r/o. H. No. 452, Dabholwada,
Chapora, Bardez-Goa.

12. Mr. Megasama Tanu Govekar,
@Megaxama Tanu Govekar,
Son of late Tanu Govenkar,
Aged 51, years, married, service,
Indian National and his wife

13. Mr. Ganga M. Govekar
Wife of Megasama T. Govekar,
52 Years of age Major of age,
married, housewife,
Indian National, both r/o H. No. 452,
Dabholwada, Chapora,
Anjuna, Bardez – Goa

.....PETITIONERS

VERSUS

1. Mrs. Anjani A. Govekar,

Wife of late Anant Govekar,
Age 58 years, married, housewife,
r/o. H.No. 453, Chapora,.
Anjuna, Bardez - Goa

2. Mr. Vishwanath Anant Govekar
Age 26 years, service, bachelor,

3. Mr. Pandit Budhu Govekar
Aged 55 years, married, housewife,
Indian National,

3a) Mr. Sameer Pandit Govekar
Son of late Pandit Budhu Govekar,
22 years of age, Bachelor,
Indian National.

3b) Ms. Kuthiksha Pandit Govekar,
daughter of late Pandit Budhu Govekar,
20 years of age, Spinster, Indian National.

3c) Ms. Pooja Pandit Govekar,
daughter of late Pandit Budhu Govekar,
19 years of age, Spinster, Indian National
All residents of H.No. 453, Dabholwada,
Shapora Anjuna, Bardez. Goa.

4. Mrs. Nisha Pandit Govekar,
Aged 55 years, married, housewife,
All residents of H. No. 453,
Dabholwada, Shapora,
Anjuna, Bardez - Goa.

5. Mrs. Suyesha S. Goltekar,
Aged 52 years, married, housewife,
and her husband,

6. Mr. Suresh Rohidas Goltekar,
Aged 60 years, married,
agriculturist, Both residents
of H. No. 148/2/C, Sodiem,
Siolim, Bardez – Goa.

.....RESPONDENTS

Mr. Dinesh Naik with Ms. Shruthi Satish Arabekar for the Petitioner.

Mr. A. D. Bhobe with Ms. Ashwini Bandekar for Respondents

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 08th February, 2024

PRONOUNCED ON: 22nd February, 2024

JUDGEMENT

1. Admit.
2. Heard Mr. Dinesh Naik with Ms. Shruthi Arabekar for the Petitioner and Mr. Ashwin D. Bhobe with Ms. Ashwini Bandekar for the Respondents.
3. The matter is taken up for final disposal at the admission stage itself with consent of the parties.
4. Mr Dinesh Naik would submit that the plaint on the face of it is barred by limitation and also no clear right to sue for want of any actual cause of action. He submits that the plaint shows only illusory cause of action and thus it needs to be rejected under Order VII Rule 11 of Civil Procedure Code(C.P.C.).
5. Mr Naik would now submit that the suit is filed by the

Respondent/Plaintiff would go to show that the Gift Deed mentioned therein is challenged which is of the year 1980. Similarly, survey records were promulgated somewhere in the year 1975 itself and there is no statement made in the plaint that there is any actual threat to the so-called claim of the Plaintiff. He submits that the plaint is filed for declaration of co-ownership for which a period of three years starts from the date of actual denial of right by the Defendants. He further submits that there is no such positive assertion made in the plaint which requires to be rejected under Order VII Rule 11 of Civil Procedure Code.

6. Mr Naik would then submit that the impugned order is contrary to the settled proposition of law and even though various Judgements were cited, same have been brushed aside without applying it to the matter in hand.

7. He would submit that paragraph 10 of the impugned order very casually observed that the Judgement cited by the Applicant were not applicable only on the premise that the plaint nowhere shows that the Plaintiffs were aware of the entries of the revenue records at the time of promulgation. This itself shows

that the plaint is casually filed without giving proper details about the cause of action.

8. Per contra, the learned counsel Shri Bhobe appearing for the Respondent Nos. 1 to 4, and 6/Original Plaintiffs claimed that a meaningful reading of the plaint itself shows that the right of co-ownership is claimed and since the Plaintiffs obtained certified copies of the survey records somewhere in the year 2014, the suit is within limitation and not barred.

9. Rival contentions fall for consideration.

10. The applicant herein are the Defendants in the suit bearing number Regular Civil Suit No.14/2014 filed by Respondent Nos. 1 to 6. The said suit is titled as suit for declaration wherein relief claimed in the prayer clause reads thus:

a) That the plaintiffs be kindly declared as co-owners of the suit properties bearing Survey Nos. 365/7, 368/12, 114/4, 108/18 and 370/4 along with the defendants.

b) Any other order which deems fit and proper to this Hon'ble Court be kindly granted in favour of the Plaintiffs.

c) Cost of the suit.

11. It therefore shows that the suit is simplicitor for declaration that the Plaintiffs are co-owners of the suit property along with the Defendants.

12. The Applicant filed an application for rejection of plaint under Order VII Rule 11 of C.P.C. In the said application it is contention of the Applicants that on reading of the plaint, it appears that the Plaintiff does not have a clear right to sue and the suit is barred under the prevailing law. The plaint does not disclose cause of action and hence the plaint is ought to be rejected under Order VII Rule 11 of C.P.C.

13. The Respondent/Plaintiff filed reply to the said application and objected to such prayer.

14. The learned Court by the impugned order rejected such application on the ground that the suit is not barred by limitation and that there is triable issue. The issues are already framed and can be decided only after the parties lead evidence to prove the same.

15. It is a settled proposition of law that an application under Order VII Rule 11 of C.P.C. can be filed at anytime and even after issues are framed. Thus, the contentions of the learned Trial

Court that since issues are framed and the same are required to be decided after the parties lead evidence on it and therefore the application needs to be rejected, is certainly against settled proposition of law. Such observation of the learned Trial Court needs to be outrightly rejected for the simple reason that the application under Order VII Rule 11 can be filed at any time and the Court is duty bound to decide it on merits.

16. In the case of **Dahiben Vs Arvinbhai Kalyanji Bhanusali, 2020 (7) SCC 366**, the Apex Court while dealing with Order VII Rule 11 CPC, elaborately discussed all earlier decisions including **T. Arvindandam Vs. T.V. Satyapal & Another, 1977 4 SCC 467** and discussed "right to sue" when accrued. It is observed that the Court must determine when the right to sue first accrue to find out the start of cause of action.

17. The Apex Court in the above case observed that the test for exercising the power under Order VII Rule 11 is that if the 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. While relying in the case of **Liverpool & London S.P. & I Association Ltd vs M.V. Sea Success 2004 9 SCC 512** wherein the Apex Court observed in

para 139 as to whether the plaint discloses the cause of action or not, is essentially a question of fact, but whether it does or does not must be found out from the reading of the plaint itself. For that purpose averments made in the plaint in either entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety a decree would be passed.

18. The Apex Court then discussed observations in the case of **Hardesh Ores Pvt. Ltd vs M/S. Hede And Company, 2007 5 SCC 614** wherein it is observed that the plaint is to be construed as it stands without addition or subtraction of words and if allegation in the plaint prima facie show a cause of action, the Court cannot embark upon any enquiry whether the allegations are true in fact. If on meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit and does not disclose a right to sue, the Court would be justified in exercising the power under Order VII Rule 11 CPC. Such power may be exercised at any stage of the suit, either before registering the plaint or before conclusion of the trial as held in the case of **Saleem Bhai & Ors. Vs. State of Maharashtra (2003) 1 SCC 557.**

19. It is further held that the provision of Order VII Rule 11 C.P.C. is mandatory in nature as the word 'shall' is used if the ground specified in clause (a) to clause (e) are made out. When the Court find that the plaint does not disclose a cause of action or that the suit is barred by any law, the Court has no option but to reject the plaint. The cause of action means every fact which would be necessary for the Plaintiff to prove if traversed in order to support his right to judgement. The cause of action consists of bundle of material facts which are necessary for the Plaintiff to prove in order to entitle him to the relief claimed in the suit. The Court is duty-bound to consider whether the Plaintiff discloses the real cause of action or something purely illusory. Article 58 and 59 of the Limitation Act 1963 provides limitation for filing suit for declaration which is three years and the time from which period begins to run when the right to sue first accrued.

20. This Court in the case of Raia Rudraji Sinai Salelicar & Ors. Vs. Smt. Laxmibai Kasturchand Nadkarni & Ors., 2023 (2) G.L.D 405(Bom) (Goa), discussed provisions of Order VII Rule 11 C.P.C. and more specifically the word right to sue is found in paragraph 26.

21. In the case of **Madanuri Sri Rama Chandra Murthy Vs.**

Syed Jalal, (2017) 13 SCC 174, the Apex Court observed that averments contained in the plaint must be read as a whole to find out whether same discloses cause of action. While reading the plaint in a meaningful manner, it is the duty of the Court to find out whether cause of action mentioned there in is a real cause of action or illusory cause of action to bring the suit within time.

22. In the case of **Shri Capistrano Gomes Vs. State of Goa, 2023 (2) GLR 222**, this court again considered an issue regarding cause of action and observed that if illusory cause of action is mentioned, the plaint needs to be rejected.

23. In **Daya Singh & Another Vs. Gurdev Singh & Ors., 2010 2 SCC 194**, the Apex Court while considering the Article 58 of the Limitation Act observed that mere adverse entry in the revenue records will not give rise to cause of action unless there is a clear and an unequivocal threat to infringe the rights of the concerned party.

24. In the case of **Eldeco Housing Industries Limited Vs. Ashok Vidyarthi & Others, 2023 SCC online SC 1612**, the Apex Court observed that the documents which is not part and

parcel of the plaint cannot be looked into for deciding the application under Order VII Rule 11 C.P.C.

25. The suit filed by the Respondents is simplicitor for declaration that the Plaintiffs along with Defendants are the co-owners of the suit property.

26. A meaningful reading of the plaint would go to show that apart from disclosing the survey numbers and other details of the suit property and the names recorded therein, it is the contention of the Plaintiffs that the names of their ancestors were not recorded. It is their contention that original suit properties were owned by late Shri Tanu Govekar and his wife Smt. Bhimarati Tanu Govekar. Said Shri Tanu Govekar and his wife Smt. Bhimarati Govekar were succeeded by their two sons Anant Govekar and Vishwanath Govekar. The said Anant Govekar expired. The Plaintiff No. 1 is the widow of Anant Govekar whereas late Vishwanath Govekar is succeeded by Plaintiff no. 1 to 6. Though, it is claimed in paragraph no. 8 of the plaint that original suit properties were belonging to late Shri Tanu Govekar and his wife Smt. Bhimarati Govekar, suddenly in paragraph no. 11, the Plaintiffs claim that the suit properties were originally belonging to late Budhu A. Govekar who was the

Father of late Anant T. Govekar. In paragraph no. 12, it is claimed that late Shri Tanu A. Govekar was a brother of Budhu A. Govekar. It is then claimed in paragraph no. 14 that Shri Vishwanath Govekar who was the great-grandfather-in-law of Plaintiff No. 1 executed a Deed of Gift dated 09/10/1980 thereby gifting the property to late Budhu Anant Govekar. In the said Gift-deed dated 09/10/1980, name of late Plaintiff's husband was not mentioned and the properties were gifted to only Shri. Budhu A. Govekar which was not in accordance with law.

27. Thus, the Plaintiffs are not sure as to who were the original owners and what are their relations. At one stage, it is claimed that originally the properties were belonging to Shri Tanu Govekar and his wife Smt. Bhimarati Govekar as found in paragraph no. 8. However, in paragraph no. 11 it is claimed that the suit properties were originally belonging to late Shri Budhu A. Govekar who was the father of late Shri Anand T. Govekar, the husband of Plaintiff.

28. Be that as it may, the gift deed dated 09/10/1980 as found in paragraph no. 15 of the plaint shows that late Shri Vishwanath T. Govekar gifted the suit property to late Shri

Budhu A. Govekar and that the name of the husband of Plaintiff No. 1 is not mentioned therein.

29. The Plaintiffs thereafter disclosed about the names recorded in the survey records of some of the family members though by misrepresenting facts and by faulty measures.

30. Again in paragraph no.19 the Plaintiffs referred to a Will dated 09/10/1980 executed by Late Vishwanath Govekar in favour of late Budhu A. Govekar claiming therein that by the said Will late Vishwanath Govekar had bequeathed his disposable quota. Thereafter in paragraph no. 20 of the plaint it is claimed that in Form 3 of the index of land of survey no. 108/15, the name of late Tanulo Anant Govekar and late Budhu A. Govekar has been jointly shown as co-owners. First of all, survey records are the records maintained by the revenue authorities and nowhere gives right of ownership to any person. At the most it would presume that the person whose name appears in the occupant's column is in possession of the suit property.

31. Further in paragraph no. 22 of the plaint the Plaintiffs are claiming rights in the suit properties on the basis of Form No. 9

and Form no. 3 of index of land as well as through their ancestors who were the owners of the suit property. It is their contention that they are not aware as to how the names of late Tanu A. Govekar was deleted from the occupant's column of the survey records. It is then claimed in paragraph no. 26 that the Defendants misrepresented the facts before the concerned authority and got their names recorded in the occupant's column of the suit property. Paragraph no. 30 of the plaint shows that the Defendants are having an eye over the suit properties and they're interested in grabbing such properties from the Plaintiffs, since their relations with the Plaintiffs are strained since last many years.

32. A very interesting statement has been made in paragraph no. 31 of the plaint which reads thus:

“ That the Defendants by taking advantage of their name in the record of rights in Form I and XIV are mis guarding the villagers by saying that they are the owners of the suit properties and Plaintiffs have no rights of any kind in the said ancestral properties which are the subject matter of the present suit”

33. Further in the plaint, it is claimed that the Defendants have intentionally suppressed material and relevant facts from the concerned officer and thereby cheated and defrauded the Plaintiffs with an ulterior motive to grab suit properties. Then in paragraph no. 34, it is claimed by the Plaintiffs that they are the co-owners of the suit properties along with the Defendants as they inherited right and title through their ancestors late Budhu A. Govekar and late Tanu A. Govekar .

34. The cause of action for filing suit is disclosed in paragraph no. 35 which reads thus:-

“That the cause of action for filing present suit arose on 28/05/2014 when he got certified copy of Form No. I & XIV of the properties bearing Survey No. 365/7, 368/12, 114/4, 108/18 and 370/4 and the same are recurring in nature”.

35. The careful and meaningful reading of the plaint would show that the Plaintiffs themselves are not sure about their own rights and through whom they are claiming such rights. There are conflicting and confusing pleadings in the plaint itself.

36. As held by the Apex Court in the case of *Daya Singh*

(Supra) that right to sue accrue when there is clear and unequivocal threat to infringe the right and mere adverse entry in the revenue record will not give rise to the cause of action, will certainly apply to the matter in hand. First of all the revenue entries are not the title documents. Only obtaining certified copies of the revenue entries will not be construed as cause of action for filing a suit, as claimed in paragraph no. 35 of the plaint. There is absolutely no material to show as to when the Plaintiffs got the knowledge of such revenue entries. There is absolutely no statement in the plaint as to when and in what manner the Defendants infringed the rights of the Plaintiffs or threatened the Plaintiffs about it.

37. The statement made in paragraph no. 30 and 31 of the plaint would not in any manner help the Plaintiff to show accrual of cause of action. The plaint must contain a specific assertion as to when and how there is a clear and unequivocal threat to infringe the right of the ownership of the Plaintiffs.

38. There is reference to a Gift Deed dated 09/10/1980 as found in paragraph no. 14, 15 and 19 of the plaint. The averment in the plaint shows that the Plaintiffs had knowledge of such Gift Deed and a will. It seems that both these documents

are executed on the same day that is 09/10/1980. However, paragraph no. 14 and 15 refers to Deed of Gift by late Vishwanath who gifted the property to Budhu A. Govekar. Whereas paragraph no. 19 refers to a Will by late Vishwanath also in favour of Budhu A. Govekar. Thus, the Plaintiffs created such confusion in the plaint itself.

39. Be that as it may, the fact remains that it is for the Plaintiffs to disclose actual cause of action and a clear right to sue, which are connected with each other. Once a right to sue accrues, the limitation starts to run. Such a limitation continues to run till the expiry of period of limitation as mentioned in the law of limitation. The suit for declaration of claiming co-ownership over the suit properties, must therefore would show as to when the right of the Plaintiff about the so called co-ownership was infringed or threatened or denied by the Defendants. That date could have been considered as right to sue as accrued in favour of the Plaintiff.

40. Paragraph no.31 of the plaint nowhere discloses as to when the Defendant started mis guarding the villagers that they are the owners in possession of the suit property and the Plaintiffs are having no rights in it.

41. Thus, a meaningful reading of the plaint would go to show that cause of action as mentioned in paragraph no. 35 is not actual cause of action but illusory in nature. The receipt of certified copies on 28/05/14 from the revenue authorities, will not in any manner give rise to a cause of action for filing of the suit as the Apex Court in the case of *Daya Singh (supra)* clearly observed that mere adverse entries in the revenue records will not give rise to cause of action unless there is clear and unequivocal threat to infringe such right. The Apex Court in paragraph no. 14 while relying in the case of **Bolo Vs. Koklan, AIR 1930 PC 270** observed that there can be no right to sue until there is an actual right asserted in the suit and its infringement or at least clear an unequivocal threat to infringe that right by the Defendant against whom the suit is instituted.

42. The matter in hand would go to show that it is the case of poor drafting and not clever drafting of the plaint. A meaningful reading of the plaint leads nowhere and difficult to understand the case put forth by the Plaintiff. Such plaint which is itself confusing about its averments and which does not disclose a right to sue or even a cause of action accruing in favour of the Plaintiffs, must be rejected as held in the case of **Church Of**

Christ Charitable Trust & Edu vs M/S. Ponniamman Educational Trust, 2012 (8) SCC 706, in its paragraph no.13 which reads thus: “While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

43. Applying the above proposition to the matter in hand, there is no manner of doubt that the plaint does not disclose a right to sue and actual cause of action. Similarly, the plaint for declaration of co-ownership right needs to be rejected since there is no clear mention as to when cause of action accrued in favour of the plaintiff. The learned Trial Court failed to consider the ratio laid down in the Judgements those cited in the impugned orders and failed to apply it to the matter in hand. The learned Trial Court also brushed aside the contentions that cause of

action as mentioned in plaint which is illusory and not the actual cause of action. Thus, the impugned order suffers from material irregularities and incorrect exercise of jurisdiction. The findings are certainly perverse and thus the revision needs to be allowed.

44. Revision stands allowed. Impugned order is quashed and set aside. Plaint in Regular Civil Suit no. 142 of 2014 pending on the file of Civil Judge Senior Division Mapusa Goa stands rejected under Order VII Rule 11 (a) of Civil Procedure Code. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.