

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.113 of 2023

1. Shaiquat Sayeeda, aged about 68 years, Female, wife of Late Shamsuzzaman Resident of Bahadurganj, P.S. Bahadurganj, District – Kishanganj, At present resident of Zakaria Street, Police Station Zora Sanko, Kolkata - 700072. All, through their Power of Attorney holder, Md. Hasan Mahmood Ansari, Son of Mahmood Alam, aged about 34, resident of 254/243, Bahadurganj Road, Kadam Rasul Khagra, Post and P.S. - Kishanganj, District Kishanganj.
2. Tarique Mustafa Zaman, aged about 47 years, Male, son of Late Shamsuzzaman, Resident of Bahadurganj, P.S. Bahadurganj, District – Kishanganj, At present resident of Zakaria Street, Police Station Zora Sanko, Kolkata - 700072. All, through their Power of Attorney holder, Md. Hasan Mahmood Ansari, Son of Mahmood Alam, aged about 34, resident of 254/243, Bahadurganj Road, Kadam Rasul Khagra, Post and P.S. - Kishanganj, District Kishanganj.
3. Khalid Murtaza Zaman, aged about 42 years, Male, Son of Late Shamsuzzaman, Resident of Bahadurganj, P.S. Bahadurganj, District – Kishanganj, At present resident of Zakaria Street, Police Station Zora Sanko, Kolkata - 700072. All, through their Power of Attorney holder, Md. Hasan Mahmood Ansari, Son of Mahmood Alam, aged about 34, resident of 254/243, Bahadurganj Road, Kadam Rasul Khagra, Post and P.S. - Kishanganj, District Kishanganj.
4. Zoya Aazra, aged about 35 years, Female, daughter of Late Shamsuzzaman, Resident of Bahadurganj, P.S. Bahadurganj, District – Kishanganj, At present resident of Zakaria Street, Police Station Zora Sanko, Kolkata - 700072. All, through their Power of Attorney holder, Md. Hasan Mahmood Ansari, Son of Mahmood Alam, aged about 34, resident of 254/243, Bahadurganj Road, Kadam Rasul Khagra, Post and P.S. - Kishanganj, District Kishanganj.

... .. Defendant/s- Petitioner/s

Versus

1. Md. Shamshad Ansari, aged about 65 years, Son of Late Md. Ilyas Ansari, Resident of Ward No. 08, Afsana Chowk, P.S. - Bahadurganj, District - Kishanganj.
2. Mushtaque Ansari, aged about 58 years, Son of Late Md. Ilyas Ansari, Resident of Ward No. 08, Afsana Chowk, P.S. - Bahadurganj, District – Kishanganj.

..... Plaintiffs/ Opposite Party 1st Set

3. Md. Ashfaq Ansari, aged about 60 years, Son of Late Md. Ilyas Ansari, Resident of ward No. 08, Afsana Chowk, P.S. - Bahadurganj, District – Kishanganj.

..... Defendant /Opposite Party 2nd Set

4. Mahesh Kumar Mor, Son of Late Prakash Narayan, Resident of Satal, P.S. Bahadurganj, District - Kishanganj.
5. Hukum Chand Mor, Son of Late Prakash Narayan, Resident of Satal, P.S.



Bahadurganj, District - Kishanganj.

6. Murli Manohar Mor, Son of Late Prakash Narayan, Resident of Satal, P.S. Bahadurganj, District - Kishanganj.
7. Yogesh Kumar Mor, Son of Late Prakash Narayan, Resident of Satal, P.S. Bahadurganj, District - Kishanganj.
8. Suresh Kumar Mor, Son of Late Prakash Narayan, Resident of Satal, P.S. Bahadurganj, District - Kishanganj.

... ... Defendants-Opposite Party 3rd Set

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Sr. Advocate Mr. Firoz Ahmad, Advocate
For the Respondent Nos. 4 to 8	:	Mr. Raghiv Ahsan, Sr. Advocate Mr. Satish Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

12 11-12-2025 Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

2. This Civil Revision application is filed under Section 115 of the Code of Civil Procedure (hereinafter referred to as CPC) against order dated 24.04.2023 passed in the Title Suit No. 131 of 2022, by the Learned Sub-Judge I, Kishanganj whereby and where under the petition filed on behalf of petitioner under Order VII rule 11(a) of the CPC was rejected.

3. The case of the plaintiff in brief, is that a piece of land situated in Mouza Satal Pargana Surjapur, Elaka Thana and Sub Registry Bahadurganj, Thana no. 361, Touzi no. 1232, the then district Purnea, now Distt. Kishanganj, Kaimi Khata no. 76, R.S. Plot No. 182, area 2.64 acre, 183 area 0.06 acres 184 area 1.42 acre, 186 area 0.10 acre, 187 area 0.37 acre, 158 area 0.19



acre, 154/394 area 0.10 acres, 185 area 0.19 acres, total area 5.07 acres land was owned, possessed and recorded in the names of Satan Lal and Ratan Lal who transferred 5.38 acres of land including 5.07 acres of land to one Samsuzzaman and Muzaffarul Bari to the extent of equal share through registered sale deed dated 12-01-1954. Further, Samsuzzaman and Muzzafarul Bari out of the said purchase land settled 4.46 acres of land in favour of the Md. Ilyas Ansari, the ancestor of the plaintiffs and defendant 2nd party and got registered deed of Quabuliyat bearing no. 160 dated 09-01-1970 and the settlee remained in settled possession throughout his life. Later the Kaimidars clarified the transfer of Kaimi right vide sale deed no. 4008 of 1973 in favour of one Shahid Hussain.

4. Plaintiff further stated that through Regd. deed no. 4009 of 1973, as per the custom prevailing in the local vicinity, the settlee Md. Ilyas settled 2.23 acres of land to one Majid Hussain. Majid Hussain continued that possession till his last breath and thereafter his heirs are in possession hence these 22 plaintiffs have no claim over that area, heirs of Majid Hussasin are not being made parties to the suit but the remaining 2.23 acres of the land is the subject matter of the suit and the detail description of the suit land described in the schedule of the



plaint. The registered sale deed no. 4008 of 1973 executed by Kaimidar Muzaffarul Bari while transferring his kaimi right in favour of said Shahid Hussain the factum of Sikmidari settlement to Ilyas was clearly mentioned and in sale deed no. 2912 of 2005 and 2918 of 2005 the title and possession holders of the land adjacent to the suit land while executing sale deed in favour of the their purchasers they also mentioned the presence of Ilyas Ansari in one of the boundary which also proves that Ilyas Ansari since 09.01.1970 onwards remained in possession of the suit land.

5. Further it is stated in the plaint that Ilyas Ansari died in the year 2010 and thereafter as per the custom prevailing in the locality plaintiffs and their brother defendant 2nd party inherited the Sikmi status / the occupancy right which they are continuing till date. As per the deed of Kaubuliyat dated 09.01.1970 the settlee used to pay rent to the kaimidar Samshuzzman for several years but no receipt was granted and then the kaimidar of the suit land Shamsuzzaman, the ancestor of the defendant 1st party having settled in Kolkata did not bother to collect the rent under the Kabuliyat or to grant any receipt thereof. So, the plaintiffs and the defendant 2nd party wanted to pay the rent directly to the state, the plaintiffs and the



defendant 2nd party in March 2016 filed an application before the Circle Officer Bahadurganj for Grant of Kaimi status under section 48D of the Bihar Tenancy Act, 1885.

6. Further it is stated in the plaint that the plaintiffs were aware of the law that there being no notification either in municipal area or Nagar Panchayat area for the applicability of section 48D of the Bihar Tenancy Act, 1885. The Circle Officer on 06.10.2016 through memo no. 784 issued a correction slip from his office to the Halka Karamchari for creating of jamabandi of the suit land in favour of the plaintiffs and the defendant 2nd party and plaintiffs came to believe that they have been granted Kaimi status of the suit land. The concerned Halka Karamchari also created Jamabandi no. 1296 in Register II of the State in the name of the plaintiffs and the defendant 2nd party and then upon payment of rent, rent receipt was also obtained. Thereafter the plaintiffs and their brother defendant 2nd party jointly sold and transferred one bigha of land to defendant 3rd party through registered sale deed bearing Sale deed no. 3143 dated 15.07.2020, 3205, 3204 dated 17.07.2020 and 2486 dated 23.06.2020.

7. Further after the creation of Jamabandi no. 1296, Hasan Mohmood Ansari claiming himself to be the power of



attorney holder of the defendant 1st party came to the house of the plaintiffs and enquired about as to how the plaintiffs could get the Jamabandi created in their name and the plain had given him the entire information but never knew that he will conspire anything against them. Plaintiff further stated in the plaint that between 10.06.2022 to 20.06.2022 the plaintiffs received a notice from the court of A.D.M, Kishanganj vide Jamabandi cancellation Case no. 41 of 2022 to reply about the creation of Jamabandi in their names and on going through the application of the defendant 1st party and obtaining record of case No. 29 of 2016-17 they came to know that the Circle Officer had gone in collusion with defendants first party and created different record vide same case no. 29 of 2016-17 to show that correction slip v. Memo no. 784 dated 06.10.2016 has been wrongly issued.

8. Learned counsel for the petitioner submitted that the learned Trial Court committed illegality in refusing the application for rejection of plaint under Order VII Rule 11(a) of CPC, the impugned order is illegal, improper and against the mandatory provisions of law and is liable to be set aside. He further submitted that the plaintiffs/opposite parties have filed the aforesaid title suit with the contention that their father was Shikmidar of the suit land, and after his death, as per the



prevalent practice in the concerned locality, the plaintiffs became Shikmidar of the said land. They further contended that as they have continued for long, hence they have acquired status of Kaimidar of the said land. The plaintiffs/opposite parties further stated in paragraph 8 of the plaint that the Circle Officer did not pass any order, but by memo number 784 issued a correction slip from his office to Halka Karamchari for creating a Jamabandi of the said land in favour of the plaintiffs and defendant 2nd party, on that action of the Circle Officer, they believed that they have been granted Kaimi status of the suit land.

8.i. He further submitted that the plaintiffs in paragraph 13 of the plaint stated that they received a notice of Jamabandi cancellation case number 41 of 2022 from the court of A.D.M. Kishanganj about creation of Jamabandi in their favour. In that background, the plaintiffs obtain the certified copy of the record of case number 29 of 2016-17 and came to know that there was all together different record and hence the correction slip issued under memo number 784 dated 06. 10. 2016 is wrong. It was further stated in paragraph 14 that the said case was in respect of another land in the name of another person, having no concern from the plaintiffs and defendant 2nd



set.

8.ii. He further submitted that with the aforesaid contentions, it is quite apparent that the plaintiffs were never granted Kaimi status in respect of the land in question, nor any order under section 48(D) of Bihar Tenancy Act, 1885 was ever passed in their favour. The prayer for rejection under Order VII Rule 11 of the CPC is to be considered only on the basis of statements made in the plaint and hence the statements made in the plaint are being referred to, whereby it is quite apparent that the father of the plaintiffs was Shikmidar of the suit land and thereby the plaintiffs are making claim of their similar right being the sons of the Shikmidar, but no order has been passed in favour of the plaintiffs or their father under section 48(D) of the Act of 1885, and therefore there is no cause of action disclosed in the plaint as to how the plaintiffs are entitled to file a suit for claiming possession, title and interest on the suit land, and hence the plaint suffers from want of affection from the statements made therein.

8.iii. He further submitted that from the statements made in the plaint, it is also apparent that the plaintiffs are seeking relief for declaring their right to possession on the suit land without any order passed under section 48(D) of the Act of



1885. As per the provisions of Bihar Tenancy Act, 1885 does said right has been given only to the Circle Officer under the said statute and the jurisdiction of the civil court is barred under section 49 P of the said Act. As such there can be no suit for making such claim or seeking that relief from the Civil Court. As such the suit is also barred by law, being section 49P of the Act of 1885.

8.iv. He further submitted that in view of the aforesaid facts and position of law the court below was required to consider this aspect and as the provision of Order VII Rule 11(a) and (b) of the CPC are fully applicable to the plaint of the aforesaid suit and therefore, the plaint should have been ordered to be rejected. The court below while passing the impugned order has committed jurisdictional error and has failed to discharge its duty to reject the plaint, which on account of non-disclosure of cause of action and being barred by law was bound to be rejected. He relied on the judgment of the Hon'ble Apex Court in *Raghwendra Sharan Vs Ram Prasanna (2020) 16 SCC 601* in which it has been held that any clever drafting by the plaintiff cannot save his plaint, rather it is the duty cast upon the court, not to be misguided by the clever drafting, rather if the suit is barred by law or does not disclose the cause of action,



then the plaint must be rejected and the concerned court must discharge its duty in terms of the provisions of Order VII Rule 11 of the CPC. He lastly submitted that it is the most appropriate case which deserves interference by this court by setting aside the impugned order, allowing the present civil revision application and finally rejecting the plaint of title suit number 131 of 2022 filed by the plaintiffs/opposite.

9. Learned counsel for the opposite party submitted that the impugned order has no infirmity and illegality. The petition of defendant Ist. party under Order VII Rule 11 (a) of CPC is not maintainable in the eyes of law as well as on fact. He further submitted that for deciding the petition under Order VII Rule 11 (a) of CPC the court has to look entire averments made in the plaint because cause of action is bundle of fact and at this stage the written statement or evidence of any of the parties is not permissible in law to be considered. He further submitted that while deciding the application of rejection of plaint the court has to look only to the allegations to the plaint and should assumed then to be correct for the time being and then to ascertain whether these allegations disclose a cause of action or not.

9.i. He further submitted that a suit cannot be



dismissed by rejection of plaint for not having claim correct relief since the reliefs can be modified and alter at the later stage of the suit. From the perusal of petition filed by members of defendant Ist. party, it is transpired that the defendant Ist. party has not gone through the entire averments of the plaint and by choosing some averments filed this absurd and baseless petition only to create delay in disposal of the suit. He further submitted that there are several claim and averments made in the plaint which requires a final adjudication through trial and as such the plaintiff have a valid cause of action, the present claim certainly discloses a valid cause of action since there are several disputed fact mentioned in the plaint. He lastly submitted that the petition for the rejection of plaint filed by the member of defendant Ist. party does not have any legal force.

10. The scope of Order VII Rule 11 of the CPC explained in various decisions and the legal principles deducible. The material to be considered for rejecting the plaint has been dealt with in the case of ***Dahiben v. Arvind Bhai Kalyanji Bhanusali*** reported in ***(2020) SCCONLINE 563*** The Apex court has settled the principle and made the following observation:

“12.6- At this stage, the pleas taken by the defendant in the written statement and



application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

“12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed”.

“23.2. The remedy under Order 7 Rule 11 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 conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the



defendant in the written statement and application for rejection of the plaint [Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. *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. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512 which reads as: (SCC p.562, para 139)*

23.12. *In Hardesh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a 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.*



23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds 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.

11. On examination of the aforesaid facts and circumstance, I am of the view that in fact of the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, the Court is not concerned with the correctness of the averments, except to state that the plaintiff has to discharge the burden of proving his case. Insofar as the application under Order VII Rule 11 of CPC is concerned, the court will proceed only that far, to examine whether the plaint discloses a cause of action and no further. Accordingly, the Court must determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

12. Furthermore, it is contended by the learned counsel of the petitioner that the jurisdiction of the civil court is barred under Section 49P of the Bihar Tenancy Act, 1885.



Consequently there can be no suit for making such claim or seeking that relief for declaring their right to possession on the suit land without any order passed under section 48(D) of the Act of 1885 from the Civil Court. Section 49P of the Act of 1885 is discussed below:

section 49P. Bar to suits: Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by any officer in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

Section 49P of the said Act provides two exception (i) fraud or (ii) want of jurisdiction, if any of the two matter arise then the bar of contesting the suit before civil court is lifted. In the fact of present case the plaintiffs mentioned in the plaint that the Circle Officer had gone in collusion with defendants first party and created different record vide same case no. 29 of 2016-17 to show that correction slip v. Memo no. 784 dated 06.10.2016 has been wrongly issued. So, the bar to suit under section 49P of the Act of 1885 will not be applicable in the present case.

13. In the present case the cause of action has been explicitly stated in paragraph no. 23 of the plaint, the cause of action for suit arose firstly on 27.07.2022 when the plaintiffs came to know that the record of the case of 48 (D) Bihar Tenancy Act,1885 filed by the plaintiffs and the defendants 2nd



party has been destroyed by the Circle Officer Bahadurganj on unlawful plea despite earlier having granted kaimi status and having issued correction slip for creation of Jamabandi in the name of plaintiffs and the defendants 2nd party and also between 10.06.2022 to 20.06.2022 when the plaintiffs received notice from the court of A.D.M, Kishanganj to face a case of Jamabandi cancellation vide case no. 41 of 2022 and on 14.10.2022 when A.D.M cancelled Jamabandi No. 1296 and also on 01.12.2022 when the defendant 1st party sent threats of dispossessing the plaintiffs from the suit land and lastly on 02.12.2022 when the Circle Officer Bahadurganj returned the fresh application illegally.

14. The Hon'ble Apex Court in judgment dated 31.10.2023 in *Kum. Geetha Vs. Nanjundaswamy & Ors.* reported in **2023 SCC OnLine SC 1407** reiterated the aforesaid principle and observed in para 7 that in simple terms, the 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 a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected. In the present case the fact that plaintiff /opposite party holding the



right, title, interest and possession over the suit land or not is the matter require deeply evaluation by further evidence which will have to be adjudicated at the appropriate stage and appropriate forum after the parties adduce oral and documentary evidence with respect to the particular point.

15. The phrase “cause of action” has not been defined in any enactment, but the meaning of it has been judicially considered in various decisions. In ***Bead v. Brown*** reported in (1889) 22 Q.B.D. 128, 131, Lord Esher M.R. accepted the definition given in ***Cook v. Gill (1873) L.R. 8 C.P. 107*** that it meant (p. 116):

“every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.”

Additionally in the case of ***Om Prakash Srivastava vs Union Of India And Anr*** reported in 2006 AIR SCW 3823 it was held

“10. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of



the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action".

Thus, it is settled law that "cause of action" consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant, since in the absence of such an act, no cause of action would possibly accrue or would arise. The fundamental principle of *ubi jus ibi remedium* (where there is a right there must be a remedy), applies with full force here, as the petitioner has successfully demonstrated, at this preliminary stage, both the existence of a legal right and its alleged infringement. Moreover the plain reading of plaint suggest that the cause of action exist and the present case is not fit to be rejected as order VII rule 11 of CPC will not apply.

16. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any valid



ground for interference in the impugned order of the trial court.
This Civil Revision is devoid of merit and is liable to be
dismissed.

17. Accordingly, the present Civil Revision stands
dismissed.

(Ramesh Chand Malviya, J)

Anand Kr.

U			
---	--	--	--

