

CIVIL REVISION No.67 of 2022

In

CIVIL MISCELLANEOUS JURISDICTION No.847 of 2018

Munindra Ranjan Srivastave @ M.R. Srivastava son of Late Bhagwati Charan Srivastava, R/o C-1/14 Kendriya Vihar, VIP Road, PO Airport, Rajarhat Gopalpur (M), Kolkata Airport, North 24 Parganas, West Bengal, 700052.

... .. Petitioner/s

Versus

1. Ram Bijay Narayan Gupta @ Bablu son of Late Naval Kishore Prasad Gupta, R/o Mohallah Madhopur, Dharam Narayan Path, P.O. Basudeopur, P.S.- Kotwali, District- Munger.
2. Raj Gupta son of Late Yogendra Gupta, R/o Mohallah Madhopur, Dharam Narayan Pathak, P.O. Basudeopur, P.S.- Kotwali, District- Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Surya Nilambari, Advocate

For the Respondent/s : Mr. Surya Narayan Sah, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

16 21-11-2025

Heard learned counsel on behalf of the

petitioner and learned counsel for respondents.

2. The present Civil Revision has been filed against the order dated 14.12.2017 passed by Learned Court of Sub-Judge II, Munger in T.S. Case No. 34 of 2015, whereby and whereunder, the petition under Order 7 Rule 11 filed by the petitioner/defendant 2nd party has been rejected.

3. Learned Counsel for the petitioner/defendant

2nd party submitted that the learned trial court committed

illegality in refusing the application for rejection of plaint

under order VII rule 11 of the Civil Procedure Code, 1908



(hereinafter CPC), and therefore, the impugned order is illegal, improper and against the mandatory provisions of law and is liable to be set aside. The learned trial court failed to appreciate the fact that the plaint of the plaintiff fell short of the basic material facts which would disclose a cause of action against the petitioner/defendant which is quintessential to be proved and which would have enabled the opposite party to secure a decree in his favour.

3.i. She further submitted that the date of death of great grandfather of the opposite party/plaintiff, namely, Ram Lal has not been mentioned in the plaint nor any date when the opposite party/plaintiff came in possession of the property of the suit has been mentioned in the plaint. Further, no relief has been sought against Bidywati Devi, (the mother of the petitioner/defendant 2nd party) and that out of suit land measuring 12 kathas 45 decimals, jamabandi no. 54 still stands in her name to the extent of 3 kathas and no any relief has been sought with regard to the cancellation of her *jamabandi*.

3.ii. She further submitted that the opposite party/plaintiff had approached Additional Collector and D.C.L.R. Sadar Munger, but no details regarding the same



have been brought on record, along with portion of the suit land which has been alleged to capture by the petitioner/defendant 2nd party.

3.iii. She further highlighted the incongruity between the statements of the opposite party where at one hand, she asserts in Paragraph No. 2 of the plaint that his family has been in uninterrupted possession of the suit property since 1909 while on the other hand in Paragraph No. 8 of the plaint, it has been stated by him that the petitioner/defendant 2nd party is residing in a portion of the land as the *karpardaz* of the opposite party/defendant 1st party.

4. The Learned counsel for the opposite party/plaintiff submits that the property is his ancestral property and has been in his exclusive possession since 1909 and it is adjacent to his residential house and is, therefore, the integral part of the residential house of the opposite party/plaintiff.

4.i. It is further submitted on his behalf that he came in knowledge regarding the creation of jamabandi No. 54 in the favour of the Diyawati Devi when he approached the D.C.L.R. Sadar Munger for the fixation of rent and



thereafter, they are intending to alienate the suit property to third parties while the matter is pendente lite. It is also alleged that the petitioner/defendant 2nd party and opposite party/defendant 1st party have also captured two rooms in the said land and there is apprehension of breach of peace at their instance.

5. Accordingly, the primary question for this Court's determination 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.

6. Before testing the correctness or otherwise of the impugned order, it would be advantageous and appropriate to refer hereunder the order VII rule 11 CPC, as also position of law propounded by the Apex Court in various judgments on the subject:

*Order 7 Rule 11. Rejection of Plaint –
The plaint shall be rejected in the
following cases:*

*a) where it does not disclose a cause of
action;*

7. The words “cause of action” for the purposes of Order VII Rule 11 CPC has been considered by the Apex court in case titled as “***A.B.C Laminart Private***



Limited Vs. A. P. Agencies, Salem reported in 1989 (2)

SCC 163” as follows: -

“Cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a fight to 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 can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

8. The Hon’ble Apex court has explained the scope and and the legal principles deducible of order VII rule 11 of the CPC in various decisions. The material to be considered for rejecting the plaint has been dealt with in the



case of ***Dahiben vs. Arvind Bhai Kalyanji Bhanusali*** reported in (2020) SCC ONLINE 563. The Apex court has settled the principle and made the following observations:

“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.

23.3. The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315 this Court held



that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power 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 if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

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 SCC 512], 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)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their 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.

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.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003)1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi ,1986 Supp SCC 315].

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."



9. 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.

10. 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 Paragraph No. 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. Here a reference to the judgment of the Apex Court passed in case titled as ***"Jageshwari Devi and Ors. Vs. Shatrughan Ram reported in 2007 (15) SCC 52"*** also becomes imperative here under:-

"There is difference between non-disclosure of cause of action and defective cause of action, while the former comes within the scope of



Order 7 Rule 11, the later is to be decided during the trial of the suit.”

11. Reverting to the case in hand, the perusal of the averments in the plaint, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. As has been noticed in the preceding paragraphs, the settled principles law laid down by the Apex court for rejection of plaint and also as envisaged under order VII rule 11 clause (a) has been that a plaint shall be rejected where it does not disclose a cause of action. No ground like the one defectively pleaded cause of action has been either provided in order VII rule 11 CPC or else in any of the pronouncements of the Apex court for rejection of the plaint.

12. 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. Though, there are several information as alleged by the petitioner/defendant 2nd party which are vital for the adjudication of the right of



the parties which although remain incomplete, does not by itself, lead to non-disclosure of the cause of action.

13. From the perusal of the plaint, it is clear that the petitioner/Defendant 2nd party have a rival claim to a portion of the land alleged to be in the ancestral property of the Opposite Party/Plaintiff, so this fact in itself creates a cause of action. The fact that whether the opposite party no. 1/plaintiff is holding the title of ownership over the entire suit property is a matter requiring deep evaluation in the furtherance of evidence presented which will have to be adjudicated at the appropriate stage and by the appropriate forum after the parties adduce oral and documentary evidence with respect to the specific point. Though, the plain reading of plaint suggests that some vital information for the purpose of the adjudication of the title suit are indeed incomplete but nonetheless the cause of action exists and therefore, the present case is not fit to be rejected as order VII rule 11 of CPC will not apply.

14. 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.

15. Accordingly, the present Civil Revision is dismissed and if any Interlocutory application is pending shall also deemed to be dismissed.

(Ramesh Chand Malviya, J)

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