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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.24 OF 2024

Chandrakant s/o Punaji Lohakare,
Aged about 63 Years,
Occupation : Cultivator,
R/o Sindi (Rly),
Taluka Seloo, District Wardha

..... APPLICANT
(Org. Defendant)

// VERSUS //

Subhash s/o Natthuji Atkare,
Aged about 53, Years,
Occupation : Cultivator,
R/o. Palasgaon, (Bai),
Taluka Seloo,
District Wardha.

....NON-APPLICANT
(Org. Plaintiff)

Mr. Neeraj Khandewale, Counsel for applicant.
Mrs. Shabana M. Khan, Counsel for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 18.02.2025
PRONOUNCED ON : 07.03.2025

JUDGMENT :

1. Heard learned Counsel Mr. Neeraj Khandewale for the applicant and learned Counsel Mrs. Shabana M. Khan for the non-applicant.
2. **Rule.**
3. By this Civil Revision Application, the applicant has challenged the order dated 19.10 .2023 passed below Exhibit 11

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in RCS No.1/2023 by the Joint Civil Judge Junior Division, Seloo, rejecting the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint.

4. The relevant necessary facts for disposal of the revision application are as under:

The non-applicant is the original plaintiff who filed RCS No.1/2023 for declaration, partition and separate possession with a contention that he is the owner of suit property Field Survey No.518 admeasuring 1 H. 21 R. bounded as towards East – field of Yeshwant Badge, towards West - field of Pramod Dnyaneshwar Deotale, towards North - field of Vasanta Narayan Shirse and towards South - field of Madanmohan Dattatraya Deshpande. The defendant according to the pleading is having illegal money lending business and used to give loan on interest to the needy person and the plaintiff sometimes was in a dire need of money, and he obtained hand loan of Rs.70,000/- and defendant (present applicant) obtained the signed blank stamp paper from him for security of loan purpose. As per the allegation, the present applicant misused the said stamp and shown that sale deed executed in his favour by the present non-applicant on 21.06.2016 on consideration of Rs.3,69,000/-, in fact, the applicant gave the loan amount of Rs.70,000/- and shown the

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document of sale deed against the said loan. In fact, the plaintiff is illiterate person and by taking disadvantage of the same, he misused the blank signed stamp paper and without knowledge of the plaintiff, shown that plaintiff has executed the sale deed in his favour. In the year 2019, when the plaintiff was cultivating the suit field, the defendant in person entered in the suit field and trying to take the possession of the suit field. But the plaintiff obstructed to the defendant and plaintiff also refused to handover the possession of the said suit field. The said sale deed executed fraudulently by the defendant in his favour.

5. Thereafter, the defendant had filed the Revenue Case LND/30-19/2020-21 before the Tahsildar for obtaining the possession of the suit field on the basis of the alleged fraudulent sale deed. The Tahsildar, Seloo passed order under Section 145 of the Maharashtra Land Revenue Code against the plaintiff. The plaintiff has challenged the said order dated 11.08.2020 vide R.T.S. No.68/LND-30/2020-21. The Sub-Divisional Officer, Wardha admitted the appeal and remanded the matter before the Mamlatdar Court at Seloo for further adjudication. Against the order of the Sub-Divisional Officer, the defendant preferred an appeal to the Mamlatdar Court, Seloo R.T.S. 29/2021-2022 on 13.05.2022. Being aggrieved by the impugned order passed by the Mamlatdar Court, Seloo on 13.05.2022 the plaintiff

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preferred the Revenue Appeal before the Sub-Divisional Officer, Wardha vide R.A. No.109/MCA-5/2022. The plaintiff also took written objection before Tahsildar on 07.07.2022, before the Sub-Divisional Officer, Wardha and further sent the notice to the defendant on 11.07.2020 and informed that the alleged sale deed is not binding upon him as it is not executed by him. As per contention of the plaintiff, the alleged sale deed is illegal and bad in law. Thus, as per the plaintiff, the cause of action to file the suit arose on 21.06.2016 when the defendant got executed the alleged sale deed in his favour from the plaintiff without paying any consideration to the plaintiff and therefore, he constrains to file the suit for declaration and separate possession.

6. In response to the suit summons, defendant appeared and filed an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC') on the ground that the suit is filed by the plaintiff under Section 34 of the Specific Relief Act, 1963 for declaration, partition and separate possession against the defendant in respect of field Survey No.518 admeasuring 1 H. 21 R. situated Mouza Palasgaon, Taluka Seloo, District Wardha on the basis of sale deed dated 21.06.2016, on the ground that sale deed dated 21.06.2016 is illegal one. The suit is not instituted within three

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years from the date of execution of sale deed, and therefore, the suit is barred by law of limitation. The another ground raised by the defendant is that there is no cause of action arose to file the suit, and therefore, the plaint deserves to be rejected in view of Order VII Rule 11(d) of CPC.

7. The application of the defendant under Order VII Rule 11 of CPC is strongly opposed by the plaintiff on the ground that a plaint cannot be rejected under Order VII Rule 11 merely on the ground that the plaintiff is not entitled to any relief in the suit, in fact, suit is filed by the plaintiff within period of limitation after he got the knowledge, and therefore, the application deserves to be rejected.

8. After hearing both the sides and on perusal of the averments in the plaint, the Joint Civil Judge Junior Division, Seloo rejected the application vide Exh. 11 by observing that on perusal of the plaint, it reveals that plaintiff pleaded that the alleged sale deed is nothing but executed out of money laundering transaction. The defendant has not paid any consideration amount as stated in the alleged sale deed and defendant played fraud, mischief and executed the alleged sale deed without taking free consent of the plaintiff. As per Article 59 of the Limitation Act, the plaintiff needs to come before the Court within three years from the date of knowledge of the

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alleged documents which he wants to annulled or declared to be null and void. On perusal of the entire pleading, it appears that all these facts need to prove on merit of the case by the trial. The point of limitation is the mixed question of law and facts. Without going through the entire evidence of both sides, the Court cannot come to the conclusion that the suit is barred by law of limitation. In view of that, application is rejected.

9. Being aggrieved and dissatisfied with the said order present revision is filed by the original defendant on the ground that the suit is barred by limitation. The sale deed was executed on 21.06.2016. Thus the cause of action arose on 21.06.2016 and the suit is filed by the plaintiff in the year 2023 i.e. on 04.01.2023. Thus, the suit is beyond the period of limitation. The plaint shall be rejected in view of Order VII rule 11(d) of CPC where the suit appears from the statement in the plaint to be barred by any law.

10. Learned Counsel Mr. Khandewale for the applicant submitted that suit is beyond the period of limitation. The entire pleadings shows that the suit is not within limitation, and therefore, it is barred by law of limitation. Learned trial Court has not considered the same and also ignored the Article 56, 57 and 58 of the Limitation Act which shows the limitation to filing

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of the suit is of three years, and therefore, the plaint is liable to be rejected.

11. Per contra, learned Counsel Mrs. Shabana M. Khan for the non-applicant submitted that plaint para No.4 shows the bundle of facts disclosing the cause of action. There was continuing cause of action to file the suit. Thus, the suit is within the limitation, and therefore, the application is rightly rejected by the trial Court.

12. Learned Counsel Mr. Khandewale placed reliance on the decision of **Indian Evanjelical Lutheran Church Trust Association Vs. Sri Bala and Company**, reported in **2025 SCC OnLine SC 48**. Whereas the learned Counsel for the non-applicant/plaintiff placed reliance on **G. Nagaraj and another Vs. B. P. Mruthunjayanna and others** reported in **2023 SCC Online SC 1270**.

13. On perusal of the submissions made by learned Counsel for the applicant and non-applicant, who are originally plaintiff and defendant in the suit. The non-applicant has filed the suit for declaration, partition and separate possession under Section 34 of the Specific Relief Act. There is no dispute that the suit property Survey No.518 ademasuring 1.21 H.R. was originally owned by the plaintiff. As per the contention of the defendant, the plaintiff has executed the sale deed of the said

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suit land in favour of him on 21.06.2016, whereas the plaintiff has come up with a case that he has obtained the hand loan from the defendant of Rs.70,000/- and defendant at the relevant time obtained a blank stamp paper signed by him as a security and misused the said stamp and got executed the said sale deed in his favour. The first time, the plaintiff came to know about the execution of the said sale deed in the year 2019. Immediately when the defendant i.e. present applicant obstructed his possession, he approached to the Revenue Authority and contested the application filed by the defendant for getting possession of the suit field, on the basis of alleged fraudulent sale deed. The order passed by the Tahsildar, Seloo under Section 145 of the Maharashtra Land Revenue Code is challenged by him before the Sub-Divisional Officer, Wardha vide R.T.S. No.68/LND-30/2020-2021. The Sub-Divisional Officer remanded back the matter to the Mamlatdar Court, Seloo for further adjudication. Against the order of the Sub-Divisional Officer, the defendant preferred an appeal to the Mamlatdar Court bearing R.T.S. No.29/2021-2022. The Mamlatdar Court, Seloo passed an order on 13.05.2022 in favour of the defendant and therefore, the plaintiff preferred the Revenue Appeal before the Sub-Divisional Officer, Wardha vide R.A. No.109/MCA-5/2022. The plaintiff also took the written objection before the Tahsildar Seloo on 07.07.2022 and thereafter issued the notice

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to the defendant on 11.07.2020 and informed the defendant that the alleged sale deed is not binding upon him as it is null and void *ab initio*. He further requested to the defendant that he has not paid any consideration amount to him as mentioned in the alleged sale deed and sale deed is got executed behind his back by taking disadvantage of his signature on the blank stamp paper. Thus, as per the contention of the plaintiff, the cause of action to this suit arose on 21.06.2016, and thereafter in the year 2019 when defendant obstructed his possession and preferred a Revenue Case before the Tahsildar, Seloo, and thereafter, on 29.11.2021 when the matter was remanded back to the Mamlatdar Court, Seloo for rehearing and Mamlatdar Court, Seloo passed the order on 13.05.2022, and thereafter the plaintiff preferred an appeal on 10.08.2022. Thus, there was a continuous cause of action, and therefore, the suit is filed within limitation. The main contention of the defendant is that as per the contention of the plaintiff, he came to know about the execution of the sale deed in the year 2019 as per the pleading and the suit is filed on 04.01.2023, therefore, suit is not within the limitation.

14. Learned Counsel for the applicant/(Original defendant) submitted that the alleged sale deed is of dated 21.06.2016. Even accepting that the plaintiff got knowledge

about the execution of the sale deed in the year 2019 then also the suit is not within limitation. The plaintiff placed reliance on the various communications by the defendant. The plaintiff filed an application before the Superintendent of Police on 07.07.2022 contending that the suit land is owned by him and defendant is trying to take possession of the said land. He has also filed an application before the Collector on 06.07.2022. Notice issued by the plaintiff is on 10.07.2022.

15. By filing the application under Order VII Rule 11 of CPC the ground raised by the defendant is that suit is not within the limitation and there was no cause of action. As far as the issue of limitation is concerned, it is generally a mixed question of law and facts, but when upon meaningful reading of the plaint the court can come to the conclusion that under the given circumstances after detecting the vices of clever drafting the creating and illusion of cause of action the suit is hopelessly barred then the plaint can be rejected under order VII rule 11 of CPC. While considering the application under Order VII rule 11 of CPC the Court has to confine to the averments made in the plaint and they have to be taken at their face value. The veracity of the contentions made in the plaint cannot be gone into at this stage. In the present case, the cause of action is shown to be on 21.06.2016 when the sale deed was executed in favour of the

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original defendant/applicant herein and thereafter, in the year 2019 when the applicant came in the agriculture field of the non-applicant/original plaintiff for taking possession and thereafter the defendant filed an application before the Revenue Authority for taking possession which is opposed by the plaintiff/non-applicant bearing No. LND/30-19/2020-21. The further cause of action arose on 11.08.2020 when Tahsildar, Seloo passed the order under Section 145 of the Maharashtra Land Revenue Code against the plaintiff. The plaintiff preferred an appeal before the Sub-Divisional Officer bearing No. R.T.S. 68/LND-30/2020-2021. The Sub-Divisional Officer directed the Mamlatdar Court to give a fresh hearing. The Mamlatdar Court passed an order and the defendant i.e. present applicant preferred the another appeal before the Mamlatdar Court bearing No. R.T.S. 29/2021-2022 dated 13.05.2022. The impugned order passed by the Mamlatdar Court, Seloo is further challenged by the plaintiff/non-applicant vide Revenue Appeal No.109/MCA-5 of 2022. Thus, the cause of action arose to the plaintiff on 21.06.2016 thereafter 2019 and thereafter on 21.08.2020. On 29.11.2021, 13.05.2022 and lastly on 11.07.2020 when the plaintiff issued the notice to the defendant/applicant. Order VII rule 11 speaks of 'disclosure of cause of action' and not its 'accrual'. In other words, once the plaintiff discloses a cause of action, the court will have to abide by

the same at the stage of consideration of an application for rejection of the plaint. It is now well settled that while considering an application under Order VII rule 11 of CPC the Court has to confine itself to the allegation to the plaint and the defence if any is irrelevant and cannot be looked into. At the same time, the Court has to see whether by a clever drafting an illusion of cause of action is being created as held by the Hon'ble Apex Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/S. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee** [2012 ALL SCR 2178] wherein the Hon'ble Apex Court has noticed its earlier decision in the case of **T. Arivandandam Vs. T. V. Satyapal and another** reported in (1977) 4 SCC 467 in which it was held as under:

"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 hearing so that bogus litigation can be shot down at the earliest stage."

16. It has been further held as under:

"It is clear that if allegations are vexatious and meritless and not disclosing clear right or material to sue, it is the duty of trial Judge to exercise his power under Order VII rule 11 of CPC."

17. The disclosure as contemplated within the meaning of Order VII rule 11 of CPC is not a mere mention in the plaint. The cause of action must be discernible from the allegation made in the plaint which would amount to disclosure.

18. Learned Counsel for the non-applicant placed reliance on the decision of **G. Nagaraj and another** (referred supra) wherein also the Hon'ble Apex Court held that 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.

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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. Merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint.

19. Under Order VII 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 read in conjunction with the documents relied upon, or whether the suit is barred by any law. An application under Order VII Rule 11 of CPC, it is only the plaint averments and the documents annexed with the plaint, can be looked into for the purpose of determining whether requirements under Order VII Rule 11 of the CPC are satisfied. The logic on which it is based, appears to be that the documents annexed with the plaint are relied upon by the plaintiff for the purpose of the plaint averments and thus form an integral part of the plaint.

20. In the case of **Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and ors** reported in (2021) 9 SCC 99 the Hon'ble Apex Court laid down guiding principles of deciding an application under Order VII Rule 11(d) of the Code. Whereas, in the rest of the decisions, the principles to be considered while deciding an application under Order VII Rule 11 are laid down. It is laid down

that while deciding an application under Order VII Rule 11 of the Code, few lines or passage from the plaint should not be read in isolation and pleadings ought to be read as a whole to ascertain its true import.

21. Thus, relative scope and applicability, as laid down by the Hon'ble Apex Court, is that where a plaint as a whole did not disclose cause of action, Order VII Rule 11(a) of the Code is applicable and it stops continuation of suit. If the conditions mentioned under Order VII Rule 11 are fulfilled, the entire plaint has to be rejected. Order VII Rule 11 of the Code deals with circumstances under which a plaint can be rejected. The plaint can be rejected when no cause of action is disclosed in the plaint. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

22. Thus, it is true that only on the basis of the averments made in the plaint, it could be ascertained as to whether cause of action is made out or not. It is equally true that for finding out the same, the entire pleadings in the plaint will have to be read and that too at its face value and defence taken by the defendants

cannot be looked into. It could thus be seen that the court has to find out as to whether in the background of facts, the reliefs as claimed in the plaint can be granted to the plaintiffs. It has been consistently held that if the court finds that none of reliefs sought in the plaint can be granted to the plaintiffs under the law, question then arises as to whether such a suit is to be allowed to continue and go for trial.

23. The power conferred on the court to terminate civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of the Code are required to be strictly adhered to. However, under Order VII Rule 11, duty is cast upon the court is to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint and read in conjunction with documents relied upon or whether the suit is barred by any law. Underlying object of Orders VII Rule 11 of the Code is that when a plaint does not disclose a cause of action, the court would not permit plaintiff to unnecessarily protract proceedings. It has been held that in such a case, it will be necessary to put an end the litigation so that further judicial time is not wasted.

24. The remedy under Order VII Rule 11 of the Code is 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 if it is satisfied that action

should be terminated on any of grounds contained therein. The underlying object of Order VII Rule R11(a) is that if in a suit no cause of action discloses or suit is barred by limitation under clause (d), the court would not permit a plaintiff to unnecessarily protract proceedings in the suit. A duty cast on the court is to determine whether a plaint discloses a cause of action by scrutinizing the averments in plaint read with documents relied on or whether the suit is barred by law. A cause of action, thus, means every fact which if is traversed, would be necessary for plaintiff to prove in order to support his right. It is a bundle of facts taken with the law applicable to them which gives the plaintiff a right 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.

25. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. "The right to sue" accrues only when the cause of action arises. In a suit for declaration, starting point of limitation is when "right to sue" accrues. The cause of action for purposes of Article 59 of the Limitation Act accrues only when right asserted in a suit is infringed.

26. Admittedly, the plaint discloses cause of action against the defendant on several occasions. Initially when the alleged sale

deed was executed in favour of the defendant thereafter defendant obstructed the possession of the plaintiff and subsequent thereto various proceedings were filed by the defendant as well as the plaintiff against each other. Thus, there is a continuous cause of action and therefore the ground raised by the defendant for rejection of the suit are not sustainable.

27. Since the issue in this revision pertains to the correctness or otherwise of the impugned order refusing rejection of the plaint, at this stage on considering the various facts it reveals that the bundle of facts shows there is continuous cause of action. While considering the question of rejection of the plaint, it is the plaint alone which has to be read meaningfully and not any averment in the written statement. It is also necessary sometimes to consider the documents annexed to the plaint for a holistic and comprehensive reading of the plaint in order to decide whether the plaint ought to be rejected or not. In the present case suit is filed for declaration, separate possession, injunction and the partition on the cause of action which arose time to time therefore in order to ascertain whether the plaint is within the limitation or not. All these facts are taken into consideration and the cause of action arose on various occasion shows that the suit is within the limitation. Moreover the aspect of limitation is a mixed question of law and fact

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and therefore, it is to be decided whether suit is within the limitation or not on the basis of the evidence.

28. The learned Civil Judge Junior Division by considering the pleading of the plaint which clearly shows and discloses the proper cause of action to the suit. The cause of action is nothing but the bundle of facts and by observing the same, the application is rejected. I do not find any merit in the application. In view of that the application deserves to be dismissed. Accordingly, the application is hereby dismissed.

(URMILA JOSHI-PHALKE, J.)

Sarkate.