Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner & Ors on 23 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1801, 2004 (3) SCC 137, 2004 AIR SCW 799, (2004) 1 KHCACJ 633 (SC), (2004) 2 ALLMR 360 (SC), 2004 (1) SLT 917, 2004 (2) UJ (SC) 817, 2004 (1) KHCACJ 633, 2004 (1) ACE 581, 2004 (2) SCALE 82, 2004 SCFBRC 258, 2004 (3) SRJ 97, 2004 (2) ALL MR 360, 2004 (1) ALL CJ 773, (2004) 16 ALLINDCAS 405 (SC), 2004 UJ(SC) 2 817, (2004) 8 SERVLR 180, (2006) 1 RENCR 138, (2004) 2 WLC(SC)CVL 122, (2004) 16 INDLD 110, (2004) 3 LANDLR 101, (2004) 2 MAD LW 800, (2004) 1 RENTLR 453, (2004) 2 ALL WC 1505, (2004) 2 CAL HN 152, (2004) 3 CIVLJ 446, (2004) 2 CURCC 20, (2004) 2 CIVILCOURTC 663, (2004) 2 SCALE 82, (2004) 2 GCD 1606 (SC), (2004) 55 ALL LR 260, (2004) 1 CAL LJ 407, (2004) 2 ANDHLD 115, (2004) 2 SUPREME 40, (2004) 97 REVDEC 129, (2004) 4 BOM CR 904, 2004 (2) BOM LR 511

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  448 of 2004

PETITIONER:
Sopan Sukhdeo Sable & Ors.

RESPONDENT:
Assistant Charity Commissioner & Ors.

DATE OF JUDGMENT: 23/01/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Civil) No. 20366/2002) ARIJIT PASAYAT,J Leave granted.

The appellants who were plaintiffs in a suit filed before the learned Civil Judge, Senior Division, Srirampur have questioned legality of the conclusions arrived at by the Courts below holding that the plaint filed by them was to be rejected in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short the 'Code'). The plaintiffs claimed to be tenants under respondent No.2, Shaneshwar Deosthan Trust (hereinafter referred to as the 'trust'). Its trustees and the Assistant

Charity Commissioner (in short the 'Commissioner') were the other defendants. Plaintiffs claimed that they were tenants of the trust of which the defendants Nos. 3 to 13 were the trustees. Alleging that they have been forcibly evicted notwithstanding continuance of the tenancy, the suit was filed for the following reliefs:

> A) Plaintiff no. 1 to 17, be declared as the tenants of the properties described in the plaint belonging to temple Trust, of which defendant No.2 to 13 are trustees.
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> B) Defendant No.1 to 13, be permanently restrained by an order of injunction not to evict plaintiff No.1 to 13, forcibly with the help of police and also not to interfere in their business being carried on by them in suit shops, and not to interfere in the possession of suit shops in any manner-whatsoever, either by themselves or by their servants, agents, relatives or anybody claiming through or under them.
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> C) Direct the defendant No. 2 to 13, to pay compensation for the loss caused to the plaintiffs on account of their acts of omission and commission as described in the plaint, committed by them prior to the filing of the suit and during pendency of suit for the damage that may be caused to the plaintiffs.
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> D) Defendant No.1 be directed to enquire into the illegal acts, committed by defendant No.2 to 13, and issue appropriate direction to that effect.

The suit was numbered as R.C.S. No.160/1997 in the trial Court. The stand of the plaintiffs-appellants essentially was that the tenancy was for a period of 11 years and not for 11 months as claimed by the trust. An application was filed by the trust raising a preliminary plea that the plaint is liable to be rejected under Order VII Rule 11 of the Code. With reference to Section 80 of the Bombay Public Trusts Act, 1950 (in short the 'Act') it was urged that no Civil court had jurisdiction to decide or deal with any question which by or under the Act is to be decided or dealt with by any officer or authority under the Act and in respect of which the decision or order of such officer or authority has been made final and conclusive. The trial Judge framed two preliminary issues, i.e. (a) whether the suit was liable to be rejected under Order VII Rule 11 of the Code for want of cause of action, and (b) whether the suit was tenable against all the defendants. Findings in respect of the preliminary issues were recorded against the plaintiffs. A finding was recorded that the plaint does not disclose any cause of action and also in view of the specific provisions of the Act, the jurisdiction vests only with the District Court to give direction to Commissioner and in any event Section 80 of the Act took away jurisdiction of the Civil Court and the plaint was rejected. Challenging the judgment and decree dated 21.10.2000 passed by the learned Civil Judge, Senior Division, Srirampur, an appeal was preferred before the District Court which was numbered as Regular Civil Appeal No.178 of 2000. The appeal was dismissed and the decree passed by the trial Court was confirmed by II Additional District Judge at Srirampur, Ahmed Nagar District. The matter was carried in Second Appeal before the High Court which by the impugned judgment upheld the findings recorded by the Courts below. Before the High Court, it was contended by the appellants that Sections 50, 51 and 80 of the Act had no application and the lease being for 11 years, the action of the trust in dispossessing the plaintiffs forcibly cannot have the approval of law. The

stand of the trust was to the effect that the plaintiffs have not approached the Court with clean hands. They had tried to get relief from the High Court by filing a petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). They failed to comply with the interim directions given by the High Court and before the date posted before the High Court for consideration of the interim orders, they filed the suit and prayed for injunction. Subsequently, the writ petition was withdrawn. The plaint filed by the plaintiffs did not disclose any cause of action and in any event the relief sought for could not have been granted by the Civil Court in view of the specific provisions contained in Sections 50, 51 and 80 of the Act. There was no forcible dispossession as claimed. The Courts below were justified in rejecting the plaint.

The High Court accepted the plea of the trust and dismissed the second appeal affirming the conclusions arrived by the Courts below.

In support of the appeal, Mr. V.A. Mohta, learned senior counsel appearing for the appellants submitted that the Courts below have lost sight of the nuances of Order VII Rule 11 of the Code. Even if for the sake of arguments it is conceded that some reliefs were to be dealt with by the authorities under the Act, the reliefs were severable and the Civil Court had jurisdiction to deal with them. The dispute projected in the suit essentially related to the question of tenancy and the relationship between the plaintiffs and the defendant-trust vis-`-vis the question of tenancy, the term of tenancy are matters intermittently linked with these basic issues. Such issues cannot be decided by the authorities under the Act. Therefore, the rejection of the plaint under Order VII Rule 11 of the Code cannot be maintained in law. The plaintiffs were dispossessed illegally and a person dispossessed illegally was entitled to protection. A person without title but in 'settled' possession as against mere fugitive possession, can get back possession if forcibly dispossessed or rather if dispossessed otherwise than by due process of law.

Per contra, Mr. A.V. Savant, learned senior counsel appearing for the defendant-trust submitted that the Courts below have concurrently found it as a matter of fact that the plaint did not disclose a cause of action and the Civil Court had no jurisdiction to deal with a matter, specifically in view of what has been statutorily provided in Section 80 of the Act. With reference to the judgment of the High court it was pointed out that the plaintiffs had not approached the Court with clean hands. They had adopted dubious methods, did not comply with the directions of the High Court for depositing the stipulated amount. By a ruse, some reliefs have been sought for in the plaint totally out of context with the main prayers which are to be dealt with in terms of Sections 50 and 51 of the Act. There were no pleadings about alleged forcible dis-possession and wholly untenable plea about the period of tenancy has been rightly rejected by the Courts below. Clauses (a) and (d) of Rule 11 have full application to the facts of the case. The whole purpose in filing the suit was to somehow or other remains in possession of the shops which were leased out to them for certain periods. As a result of the actions of the plaintiffs, the trust would have been put to huge financial loss. All this according to him, disentitle the appellants from any relief under Article 136 of the Constitution.

Order VII Rule 11 of the Code reads as follows:

Order VII Rule 11: Rejection of plaint. The plaint shall be rejected in the following cases :-

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claims is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp- paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

In the present case the respondent-trust has relied upon clauses (a) and (d) of Rule 11.

Before dealing with the factual scenario, the spectrum of Order VII Rule 11 in the legal ambit needs to be noted.

In Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003 (1) SCC 557) it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors. (1998 (2) SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See T. Arivandandam v. T.V. Satyapal and Anr. (1977 (4) SCC 467) It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill (1982 (3) SCC 487), only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

In Raptakos Brett & Co.Ltd. v. Ganesh Property (1998 (7) SCC 184) it was observed that the averments in the plaint as a whole have to be seen to find out whether clause

(d) of Rule 11 of Order VII was applicable.

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

Submission of learned counsel for respondent No.2- trust was that requirement of law being reading the plaint in its totality, the appellants cannot take the plea that they would give up or relinquish some of the reliefs sought for. That would not be permissible. The plea clearly overlooks the basic distinction between statements of the facts disclosing cause of action and the reliefs sought for. The reliefs claimed do not constitute the cause of action. On the contrary, they constitute the entitlement, if any, on the basis of pleaded facts. As indicated above, Order VI Rule 2 requires that pleadings shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim. If the plea of Mr. Savant, learned counsel for the respondent-trust is accepted the distinction between the statement of material facts and the reliance on them for the claim shall be obliterated. What is required in law is not the piecemeal reading of the plaint but in its entirety. Whether the reliefs would be granted on the pleaded facts and the evidence adduced is totally different from the relief claimed. All the reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a- vis the pleadings would not mean compartmentalization or segregation, in that sense. The plea raised by the respondent-trust is therefore clearly unacceptable.

Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.

As noted supra, the Order VII Rule 11 does not justify rejection of any particular portion of the plaint. Order VI Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. (1936) 1 KB 697 in the following passage :

> The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see Philipps v. Philipps ((1878) 4 QBD
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> 127)); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez (1969 (3) SCC 238), and the distinction between "material facts" and "particulars" was brought out in the following terms:

> The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.
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> Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

According to Mr. Mohta appearing for the appellants, as noted above, the reliefs are separable and merely because some of the reliefs cannot be granted by the Civil Court it would entail an automatic rejection of the old plaint. In fact he submitted that some of the reliefs would be given up by the plaintiffs in the suit itself. It is true as contended by Mr. Savant learned counsel appearing for the respondent-trust by ingenious drafting a cause of action in the nature of red herrings cannot be brought into judicial arena. But a reading of the reliefs shows that some of them can only be considered by the Civil Court.

Under Order II Rule 1 of the Code which contains provisions of mandatory nature, the requirement is that the plaintiffs are duty bound to claim the entire relief. The suit has to be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinguished afterwards. If the plaintiffs as contended by Mr. Mohta want to relinquish some reliefs prayer in that regard shall be done before the trial Court. A reading of the plaint and the reliefs along with the contents of the plaint goes to show that the main dispute relates to the question of continuance of tenancy and the period of tenancy. They are in essence unrelated with the other reliefs regarding enquiry into the affairs of the trust. Such enquiries can only be undertaken under Section 50 of the Act. For instituting the suit of the nature specified in Section 50, prior consent of the Charity Commissioner is necessary under Section 51. To that extent Mr. Savant is right that the reliefs relatable to Section 50 would require a prior consent in terms of Section 51. If the plaintiffs give up those reliefs claimed in accordance with law, the question would be whether a cause of action for the residual claims/reliefs warrant continuance of the suit. The nature of the

dispute is to be resolved by the Civil Court. The question of tenancy cannot be decided under Section 50 of the Act. Section 51 is applicable only to suits which are filed by a person having interest in the trust. A tenant of the trust does not fall within the category of a person having an interest in the trust. Except relief in Para D of the plaint, the other reliefs could be claimed before and can be considered and adjudicated by the Civil Courts and the bar or impediment in Sections 50 and 51 of the Act will have no relevance or application to the other reliefs. That being so, Sections 50 and 51 of the Act would not have any application to that part of the relief which relates to question of tenancy, the term of tenancy and the period of tenancy. The inevitable conclusion therefore is that Courts below were not justified in directing rejection of the plaint. However, the adjudication in the suit would be restricted to the question of tenancy, terms of tenancy and the period of tenancy only. For the rest of the reliefs, the plaintiffs shall be permitted within a month from today to make such application as warranted in law for relinquishing and/or giving up claim for other reliefs.

Another plea which has been raised with some amount of vehemence by the appellant is the alleged forcible possession. This plea is strongly disputed by learned counsel for the respondent-trust who says that the possession was taken in accordance with law and as noted above, by voluntary surrendering by most of the tenants. Much of this controversy revolves from the date till the order of injunction passed by the trial Court operated.

There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that if any person is dispossessed without his consent from immovable property other wise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. That a person without title but in "settled" possession as against mere fugitive possession can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh v. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate v. Mrs. Shobha Venkata Rao, (1989 (4) SCC 131,at p.136), Ram Rattan v. State of U.P. (1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (1989 (2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma v. Union of India (AIR 1954 Bom. 358).

Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963 can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction? In Mahadeo Savlaram Sheike v. Pune Municipal Corporation (1995 (3) SCC 33), it was held, after referring to Woodrofe on "Law relating to injunction; L.C. Goyal 'Law of injunctions; David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court

quoted Shiv Kumar Chadha v. MCD (1993 (3) SCC 161) wherein it was observed that injunction is discretionary and that:

> "Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

Reference was also made to Dalpat Kumar v. Prahlad Singh (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in Mahadeo's case (supra) that:

> "It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

The question of forcible possession as claimed is also a matter which can be pressed into service by the parties before the trial Court and if raised the Court shall deal with it considering its relevance to the suit and accept it or otherwise reject the plea in accordance with law. We do not think it necessary to express any opinion in that regard.

Learned counsel for the respondent-trust has urged with some amount of vehemence about the conduct of the plaintiffs in not depositing the arrears of money and the effect of 22 of the tenants out of total 44 tenants surrendering possession. This is a matter which can be considered in the trial itself so far as it is relevant. It was submitted by learned counsel for the trust that in any event the District Court was the only Court having jurisdiction and not the Court where the suit was filed. This aspect does not appear to have been specifically urged before the Courts below. So we do not think it appropriate to express our opinion thereon. As regards the question of arrears it shall be open to the respondent-trust to move the trial Court for such directions as are available in law. Looking into the nature of dispute it would be appropriate if the trial Court makes an effort to complete the trial within six months from the date of the judgment. The parties are directed to cooperate for disposal of the suit early within the stipulated time. The appeal is allowed to the extent indicated without any order as to costs.