



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 3 OF 2024

RAVALNATH DEVASTHAN
THR ITS PRESIDENT
BHUTNATH DESAI

... APPLICANT

Versus

SURAJ VISHWESHWAR
SINAI LAAD AND ANR

... RESPONDENTS

Mr Prasheen Lotlikar with Mr. Bhavesh Bhasker, Advocates
for the applicant.

Mr R. G. Ramani Senior Counsel with Mr. Pranav Shenvi
Kakodkar and Mr. Vinayak Nevrekar, Advocate for the
respondent nos.1 and 2.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 31st July, 2024

ORAL ORDER

1. Heard Mr. Lotlikar learned counsel for the Applicants
and Mr. Ramani learned Senior counsel along with Mr.
Kakodkar for the Respondents.

2. The challenge in the present revision is to the order
passed by the learned Trial Court dated 13.12.2023 whereby
application filed by the Applicant under Order VII Rule 11(a)
of Civil Procedure Code 1908(C.P.C. for short) for rejection
of plaint came to be dismissed.

3. Mr. Lotlikar would submit that the plaint nowhere discloses a clear cause of action for filing of the suit and an attempt was made on behalf of the Respondent/Plaintiff to create illusory cause of action by way of paragraph 33. He submits that such attempt requires to be nipped in for the purpose of rejection of plaint, since the entire plaint nowhere discloses a clear cause of action in filing of the suit, thereby claiming declaration that the plaintiffs are the owners in possession of the suit property. He submits that the contentions raised in paragraph 33 of the plaint would not amount to accrual of cause of action and since there is no specific right to sue or actual right asserted in the entire plaint, the only option that the Trial Court has is to reject the plaint under Order VII Rule 11 of C.P.C.

4. Mr. Lotlikar, submits that the learned Trial Court completely failed to consider this aspect and arrived at a wrong conclusion.

5. Mr. Ramani appearing for the Respondent/Plaintiff though tried to defend the impugned order would submit that the cause of action is mentioned in the plaint and therefore, the application was rightly rejected.

6. In the case of ***Bolo Vs. Koklan, AIR 1930 Privy Concil 270***, it has been clearly observed that there cannot be any right to sue until there is an actual right asserted in the suit along with its infringement or atleast a clear and unequivocal threat to infringe that right by the defendant against whom the suit has been instituted.

7. The above observation of the Privy Council is considered by the Apex Court in various decisions including the case of ***Daya Singh and another Vs. Gurudev Singh (Dead) by Lrs. And Ors., (2010) 2 SCC 194***. Similarly, it has been held in the case of ***Daya Singh (supra)*** that the mere adverse entry in the revenue records would not give rise to cause of action unless there is clear and unequivocal threat to infringe the right of the concerned party.

8. In ***Avinash Tanu Govekar and Others Vs. Mrs. Anjani A. Govekar in Civil Revision application No. 6/2024*** decided by this Court on 22.02.2024, a similar issue was considered along with the decision of the Apex Court as referred above.

9. Keeping in mind the above settled proposition of law, pleadings in the plaint requires to be considered.

10. The Respondent filed a suit for declaration and correction of survey records wherein it is their contention that plaintiff are the owners in possession of the suit property, however, during the time of survey of said property, it was wrongly recorded in the name of some of the defendants or their ancestors.

11. The only averment which is found in the plaint with regard to cause of action, appears in paragraph 33 which reads thus:

“The plaintiffs state that there occur a mistake in not recoding the name of the grandfather or that of the father of the plaintiff No.1 in the survey records and the plaintiffs learnt about the same in the month of November 2016.”

12. Thus it is clear from the record that the suit filed by the plaintiff is only on the ground that there appears to be a mistake in recording the name of the Grandfather or that of the Father of the plaintiff in the survey record. The knowledge of the plaintiff about such entries cannot be considered as the start of cause of action for the purpose of counting of the limitation period. Even otherwise, such

entries in absence of any infringement of the right of the parties could not be considered as cause of action for filing of the suit and that too for declaration as held by the Apex Court in the case of ***Daya Singh (supra)***. Apart from the above averments in the plaint, there is absolutely no other averments in the plaint which discloses any infringement of the right of the plaintiff and that too against the defendants.

13. The learned Trial Court in the impugned order failed to consider this aspect in proper perspective and arrived at an incorrect decision. Once it is observed that there is no cause of action for filing of the suit, there is no other option but to reject the plaint.

14. From the above observations it is clear that only by stating cause of action in paragraph 33 which could be considered as illusory cause of action, the Plaintiff cannot be permitted to continue with such claim more specifically when there are no other averments of any actual infringement of the plaintiff's rights. Only because some cause of action is disclosed, cannot give rise to continuation of such plaint. It is the duty of the learned Trial Court to read the entire plaint in a meaningful manner so as to find out whether there is any actual cause of action to continue

with such plaint.

15. For all the above reasons, the impugned order is required to be quashed and set aside. Accordingly, the impugned order is quashed and set aside.

16. The application filed by the Applicant/defendants under Order VII Rule 11(a) of C.P.C. at Exhibit 14 stands allowed.

17. Petition stands disposed of in above terms.

BHARAT P. DESHPANDE, J.