

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 71 OF 2023**

1 Ms Divyashree Tuyenkar ... Appellants  
w/o. Late Dattaram Tuyenkar  
48 years of age, widow,  
f/o. H. No.E2-105, Naika waddo,  
Calangute, Bardez, Goa,

2 Mrs. Deepika Deepak Tuyenkar  
w/o. Late Deepak Tuyenkar  
53 years of age, widow,  
r/o. H.No.368, Oxelbag Dhargal Dhargalin  
Pernem North Goa 403513

Versus

1 Mr. Vinod Vishwanath Tuyenkar  
S/o. Vishwanath Tuyenkar  
About 46 years of age, married  
R/o.H. No.105 Naika waddo  
Calangute, Bardez Goa.

2 Mrs. Vinda Tuyenkar  
w/o. Vinod Vishwanath Tuyenkar  
About 40 years of age, married,  
R/o. H. No.105 Naika waddo  
Calangute Bardez Goa.

3 Ms Maria Cristina Rozamond Pinto  
d/o Mr. Carlos Eufemiano Fransisco Jose  
Cezar Felix Pinto,  
Around 70 years of age, spinster  
R/o. H.No.118, Naika Waddo,  
Calangute, Bardez, Goa.

4 Village Panchayat of Calangute  
Through its Secretary/Sarpanch  
Calangute Panchayat building  
Calangute, Bardez, Goa. ...Respondents

Mr.C. Padgaonkar with Ms Vaishali Mahato, Advocates for the

Appellant.

Mr. Amey Phadte with Mr. A. D'Souza, Advocates for Respondent No.1.

**CORAM: BHARAT P. DESHPANDE, J**

**RESERVED ON: 11<sup>th</sup> January 2024**

**PRONOUNCED ON: 17<sup>th</sup> January, 2024.**

**JUDGMENT:**

1. Admit. Heard at the stage of admission with the consent of the parties.
2. Vide order dated 02/11/2023 the co-ordinate Bench of this Court directed that the matter be disposed of finally at the admission stage itself.
3. Heard Mr.C. Padgaonkar with Ms Vaishali Mahato, learned Counsel for the appellant and Mr. Amey Phadte with Mr. A. D'Souza, learned Counsel for Respondent No.1.
4. The present appeal is filed under Section 96 of the Code thereby challenging the order passed by the learned trial Court dated 03/05/2023 thereby rejecting the plaint under Order VII Rule 11(a) of CPC. Since the plaint is rejected for want of cause of action, the plaintiff preferred present appeal on various grounds as disclosed in the memo of appeal.

5. Mr. Padgaonkar appearing for the appellant would submit that the plaintiff filed suit for declaration, permanent and mandatory injunction claiming therein that the Gift Deed executed on 22/11/2017 is null and void and to declare the plaintiffs as co-owners of the suit property. Another relief is by way of mandatory injunction thereby directing defendant Nos.1 and 2 to demolish the illegal construction carried out of a commercial building consisting of ground plus two floors constructed in the suit property.

6. Initially, defendant No.1 filed an application under Order VII Rule 11 of CPC claiming that the suit is barred by law. Such application was filed on 21/12/2019. The plaintiff resisted such application and by order dated 21/12/2019, the learned trial Court rejected such application holding that the suit is not barred by any law and more specifically under the Panchayat Raj Act.

7. Subsequently, the defendant No.1 filed another application under Order VII Rule 11 vide Exh.22. The plaintiff objected to such application. However, the learned trial Court by the impugned order allowed such application and rejected the plaint for want of cause of action.

8. Mr. Padgaonkar appearing for the appellant would submit that while deciding such application, learned trial Court has practically gone

into the merits and rejected the claim of the plaintiff only on the basis of the plaint. He submits that the principle of res-judicata shall apply since the first application was rejected in the year 2019 itself whereas the second application on the same grounds was not tenable at all. He would submit that the observations of the learned trial Court clearly goes to show that the claim of the plaintiff has been considered on its merit and the learned trial Court has decided that the plaintiff is not having any right over the suit property. He submits that such approach of the trial Court and specifically while deciding the application under Order VII Rule 11 CPC is completely unacceptable.

9. Mr. Padgaonkar would then submit that by passing the impugned order, the learned trial Court has practically reviewed the order and observations of the same Court in the earlier order itself, which is not permissible under the guise of another application filed by the defendant No.1 invoking same provisions and when the earlier order attend finality for want of any challenge. He would further submit that the defective cause of action and no cause of action are clearly separate ground wherein the trial Court has confused by mixing both these aspects and observing that since there are no specific pleadings, the cause of action mentioned by the plaintiff is defective.

10. Mr. Padgaonkar while placing reliance in the case of Famita Joao v/s. Village Panchayat of Merces and Ors [AIR 2000 Bom 444] would

submit that Section 9 of CPC gives jurisdiction to the Civil Court to entertain the suit of civil nature and such jurisdiction has not been taken away by any provision of Goa Panchayat Raj Act. He would submit that the complaint claiming illegal construction in the neighboring plot is entitled to maintain the suit for direction to the local authorities to demolish such illegal construction even though such construction is not affecting the easementary rights of the plaintiffs.

11. Mr. Padgaonkar while placing reliance in the case of **Dhulabhai v/s. State of Madhya Pradesh and Another** [AIR 1969 SC 78] would submit that when the statute gives the finality to the order of the Special Tribunal, Civil Court jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision however does not exclude those cases where the provisions of particular Act have not been applied with or the statutory tribunal have not acted with conformity with the fundamental principles of judicial procedures.

12. Mr Padgaonkar while placing reliance in the case of **Jogeshwari Devi and others v/s. Shatrughan Ram** [(2007) 15 SCC 52], would submit that there is difference between nondisclosure of a cause of action and a defective cause of action. While former comes within the scope of order VII Rule 11, the later is to be decided during the trial of the suit.

13. Mr. Padgaonkar would then placed reliance on **Manu Babu Patel v/s. Prakash Mohanlal Desai and others** [First Appeal No.170 of 2022] decided on 27-28/07/2022 wherein the learned Single Judge of this Court observed that the principles of res-judicata can be invoked not only a separate and subsequent proceedings, but also in subsequent stages of the same proceedings. Once an order is made in the course of proceedings and becomes final, it would be binding on the subsequent stage of that proceedings.

14. In the case of **Gurdev Singh v/s. Harvinder Singh** [Special Leave to Appeal ( C) No.19018 of 2022 decided on 09/11/2022, the Apex Court observed that when the defendant claims that the plaintiff is not entitled to any relief in the suit, such contention cannot be looked into under Order VII Rule 11 CPC.

15. In the case of **Eldeco Housing and Industries Ltd. v/s. Ashok Vidyarthi and others** [2023 SCC OnLine SC 1612], the Apex Court has considered earlier decisions with regard to Order VII Rule 11 (d) and observed that no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 CPC.

16. The learned Counsel Shri Phadte appearing for the respondents strongly contended that the first application filed by the plaintiff in the

year 2019 was only with respect to clause (d) of Rule 11 of Order VII i.e. barred by law. He submits that rejection of such application would not amount to res-judicata for filing another application under Order VII Rule 11 of CPC. He submits that the present application filed wherein the defendant claimed that there is no cause of action disclosed in the plaint and therefore the plaint needs to be rejected. He would submit that the plaintiff is not having any connection with the suit property and with the gift. The plaintiff by filing such suit is trying to revive the so called agreement to sale which was allegedly executed by the predecessor of the defendant many years back. He would submit that the right of the plaintiff to file such suit has not been established on the basis of pleadings. The observation of the learned trial Court are not required to be disturbed on this ground alone.

17. Rival contentions fall for the determination.

18. The first and foremost aspect is the fact that earlier application filed by the plaintiff under Order VII Rule 11 of CPC was rejected by the Court in the year 2019 itself. Said order was never challenged by the defendant and therefore it became final as far as the parties are concerned till the disposal of the suit.

19. In this regard, it is necessary to look into the earlier application which is dated 21/10/2019, filed by defendant under Order VII Rule 11

CPC. The said application is at Exh.20 before the trial Court. It is cryptic application containing only three paras. In the first part defendant No.1 disclosed about the suit and the reliefs claimed thereunder. Paragraph No.2 claims that the relief can be otherwise also granted by the Village Panchayat in terms of Panchayat Raj Act. In the third paragraph defendant No.1 claimed that the plaint be rejected as being barred by law.

20. The plaintiff objected to such application and accordingly the learned trial Court dismissed such application by a reasoned order disclosing that the plaintiff is seeking declaration of title and inter alia praying to set aside the Deed of Gift dated 22/11/2017. Such prayers cannot be granted by the Panchayat authorities under the Panchayat Raj Act. Accordingly, the application under Order VII Rule 11 (d) was rejected.

21. It is admitted fact that such order was never challenged by the defendant No.1 and it becomes final.

22. The second application was then filed by the plaintiff which also consist of three paragraphs. The first paragraph again describes the reliefs claimed in the suit/plaint. In paragraph 2 it has been claimed that the plaintiff have no locus to file the suit as the plaintiff failed to establish its ownership rights to the suit property. Paragraph 3 of the



application states that the suit is bad in law for want of cause of action as against defendant No.1. The plaintiff filed a reply to such application however vide the impugned order dated 03/05/2023, the learned trial Court allowed such application and rejected plaint for want of cause of action.

23. The learned trial Court in paragraph 6 has observed that rejection of previous application will not ipso facto call for the dismissal of the second application as the present application is filed on different provisions of Order VII Rule 11 of CPC.

24. Admittedly, the first application was filed by defendant claiming that the suit is barred by law and in that application no ground with regard to absence of cause of action was raised.

25. Order VII Rule 11 CPC deals with rejection of plaint which reads thus :

*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 claimed is properly valued, but the plaint is returned 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 from 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.]*

26. Above provision clearly shows that plaint can be rejected on six grounds. Thus while filing the application under Order VII Rule 11 CPC, the defendant is entitled to raise all or any of the said six grounds. Once such application is filed opting for particular ground, it presupposes that the defendant is not challenging the plaint for its rejection on other counts. In fact if the defendant chooses only one or two grounds out of six while filing an application, he is either not pressing the other grounds or to say so waiving other grounds. The provisions of CPC would give a specific opportunity to the defendant to ask for rejection of plaint, it cannot be exercised piecemeal. Either of

the grounds have to be incorporated in the application or the one which are relevant for the case. Remaining grounds if not incorporated in the application could be considered as waived.

27. Be that as it may, the first application filed for rejection of plaint is as vague as vagueness could be. The said application disclosed that the suit is filed for declaration, permanent and mandatory injunction seeking the relief of demolition of illegal construction and that such relief can otherwise be granted by Village Panchayat and thus the plaint is barred by law.

28. Vide order dated 21/12/2019, learned trial Court considered such application specifically under clause (d) of Rule 11 of Order VII CPC. Learned Trial Court observed that apart from seeking mandatory injunction of demolition of illegal structure, there also a prayer to set aside the Gift Deed dated 22/11/2017. Such prayer of declaration of the Gift Deed as null and void and also claiming the declaration to be co-owners of the suit property, cannot be granted by the Panchayat authorities.

29. The second application is also similar to the first one and the contents therein are also vague. Paragraph No.1 is the same which was ground in the first application whereas paragraph Nos. 2 and 3 are slightly different wherein the defendant claim that the plaintiff has no

locus standi to file the suit as the plaintiff failed to establish its ownership rights to the suit property. It is also claimed that the suit is bad in law for want of cause of action against defendant No.1. This application was allowed by the trial Court by the impugned order.

30. The first and foremost aspect is that in the second application two grounds are taken i.e. challenging the locus of the plaintiff without establishing its ownership rights. The second ground is want of cause of action. The first ground that the plaintiff has no locus since the plaintiff failed to establish right, is not covered by any of the clauses under Rule 11 of Order VII CPC by which the Court is empowered to reject the plaint.

31. It is the contention of Mr. Padgaonkar that second application is hit by the principle of res-judicata. In this respect, he placed reliance in the case of **Manu Babu Patel**(supra). In that matter, the first application under Order VII Rule 11(d) was rejected on merits. The said order was not challenged. However, second application was filed on the same ground which was allowed by the trial Court. In that context the learned Single Judge of this Court has observed that when the first application on the same ground was rejected, the second application was not tenable as the principle of res-judicata was applied till the disposal of the proceedings.

32. In the present matter, admittedly the first application was filed under clause (d) of Rule 11 of Order VII CPC claiming that the suit is barred by law. However, the second application was filed on different ground i.e. want of cause of action. Thus the principle of res-judicata will not attract to the second application as first application was not decided in connection with want of cause of action.

33. However, the question which the learned trial Court failed to consider is that the provision under Order VII Rule 11 of CPC is the only provision for rejection of plaint and there are six grounds on which the plaint could be rejected. The defendant while filing such application for rejection of plaint is required to or entitled to take all the grounds or any of them while filing such application. Once the defendants chooses to take some grounds out of six found in the said provision, it is apparent that the defendant is waiving other grounds. It is so because the entitlement of the defendant is to file an application containing all or some of the grounds for the purpose of rejection of plaint. Once he chooses to opt for any particular ground, it is clear that the defendant is not interested or waiving other grounds in Rule 11.

34. The procedural aspect as contemplated in the Code does not provide or give liberty to the party to file applications in piecemeal. The defendant cannot be permitted to prolong the proceedings by taking only one ground at a time and on rejection, to take another ground.

Such procedure is clearly impermissible. The question of either taking one or all grounds under Order VII Rule 11 CPC is entirely depending upon the concerned party but once he chose to opt only one or two grounds, it is presumed that he is waiving other grounds. Therefore, the observations in the case of **Manu Babu Patel**(supra) will not help the petitioner as the second application was filed on different ground. However, such second application could not have been entertained by the trial Court on the ground that while filing the first application and by choosing only the ground in clause (d), the defendant waived other grounds in connection with application for rejection of plaint. Thus the defendant was certainly not entitled to raise such grounds in piecemeal manner. I say so because if the party is allowed to take one ground at a time, the intention of the defendant to prolong the suit and to take the chance of rejection of plaint after dismissal of the first application and so on will be detrimental to the justice delivery system. Only rejection of such application will not be the end of the matter as the party against whom such order is passed is entitled to file proceedings before the Appellate Court thereby disturbing the entire proceedings before the trial Court.

35. In the present matter, the first application was filed only on one ground and therefore it amounts to the waiver to other grounds available to the defendant. Once such application is rejected the

defendant was not entitled to raise other grounds by filing separate application.

36. The observations of the learned trial Court in the impugned order in connection with the pleadings and the findings are quite surprising. The learned trial Court observed that the plaintiff failed to disclose the nature of their right in the plaint. It is also claimed that the agreement of sale of the year 1982 was neither produced nor relied upon in the plaint. The parties between whom such agreement was executed are not parties to the suit and that the suit is not for specific performance of the said agreement. At one stage the learned trial Court also admitted the contentions of the defendant that the plaintiffs have no right in the suit property and hence they have no locus to challenge the Gift Deed. Similarly while considering the case of **Fatima Joao**(supra), the learned trial Court failed to consider the ratio laid down in it. The learned trial Court has further decided the right of the plaintiff by observing in paragraph 18 that the plaintiff have absolutely no right in the suit property and hence have no cause of action to file the suit. By these observations, the learned trial Court has practically decided the rights of the parties at the time of rejection of plaint itself, which is impermissible in law.

37. Apart from this, a perusal of plaint would go to show that the claim of the plaintiff has been clearly spelt out in various paragraphs.

Basically, it is claimed that there exists a property ad-measuring 2700 square meters of survey No.480/15 which is described as said property. The plaintiff claimed that part of the said property ad-measuring 766 square meters was agreed to be purchased by the father-in-law of the plaintiff namely Vishwanath Tuenkar vide agreement of sale dated 12/04/1982 from Luciano Silverio De Conceseicao Pinto. This part of 766 square meters is surveyed under Survey No.480/15 (part). The boundaries of this suit property are disclosed specifically in the plaint. It is then claimed that the said part of 766 square meters is not separated or partitioned from the entire property. Further there are pleadings that in the suit property there exists a mundkarial house standing in the name of Shiva Mahadev Tuyenkar who is the father of Vishwanath and accordingly the plaintiffs are legal heirs and entitled to the mundkarial house. It is then claimed in paragraph 8 as to how the plaintiffs are related to Vishwanath and how they derived the right. Para 9 of the plaint discloses that the Sale Deed could not be executed though entire consideration is paid to the owners. Paragraph 11 is very much relevant which reads thus:

*“11. The plaintiffs state that the plaintiff were, are and continue to be in joint possession of the Suit Property and the house bearing house No.E/2-105 of the Village Panchayat of Calangute standing thereon.”*



38. Further it is the contention of plaintiff that the defendant nos. 1 and 2 in connivance with defendant No.4 illegally constructed ground plus 2 floors of commercial premises in the suit property without leaving set back and by destroying a part of the ancestral house No. E/2-105 and without any construction licence or approval. When the plaintiff objected, defendant Nos.1 and 2 somewhere in December 2018 claimed that they are the sole owners of the suit property having acquired the right vide Deed of Gift executing in the order 2017.

39. With these pleadings and more specifically contending that the plaintiffs are in joint possession of the suit property along with house No.E/2-105, the question of non-production of the agreement of sale or joining the parties, could not have been raised and entertained by the trial Court. The claim of the plaintiffs are that they are in joint possession of the suit property. No doubt the suit is not for specific performance of the agreement for sale, however, since the plaintiffs are claiming to be in joint possession of the suit property along with the part of the house, their claim that defendants demolished some portion of the said house and constructed commercial structure without any license or permission, is a claim which the trial Court has to consider.

40. In **P.V. Guru Raj Reddy & Anr vs P. Neeradha Reddy & Ors** reported in (2015) 8 SCC 331, the supreme Court in para 5 observed as under:

*5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.*

41. In **Eldeco Housing and Industries Limited** (Supra) the Apex Court discussed various decisions on this aspect and also quoted the decision in the case of **Dahiben Vs Arvind Bhai** 2020 7 SCC 366.

42. In the case of **Dahiben**(supra)the Apex Court while considering various decisions on the aspect of rejection of plaint observed in para no. 23 and 24 as under:

*“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*

*23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*

*"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 claimed 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-papers 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 from correcting the valuation or supplying the requisite stamp-papers, 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."*

*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 this Court held that that 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: (SCC p. 324, para 12)*

*“12. .... The whole purpose of conferment of such powers 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 in the 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 scrutinising the averments in the plaint<sup>3</sup>, read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

*23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

*"14. Production of document on which plaintiff sues or relies.-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.*

*(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."*

*23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

*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 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 7 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 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. 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.*

*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 7 Rule 11 CPC.*

*23.14. The power under Order 7 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. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case.*

*23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (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.*

*24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

*24.1. In Swamy Atmananda v. Sri Ramakrishna Tapovanam this Court held: (SCC p. 60, para 24)*

*"24. A cause of action, thus, 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 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."*

*24.2. In T. Arivandandam v. T.V. Satyapal this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

*"5. ....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 Order 7 Rule 11 CPC 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...."*

*24.3. Subsequently, in ITC Ltd. v. Debts Recovery Appellate Tribunal this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.*

*24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Rama Chandra Murthy V. Syed Jalal held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly Vexatious, and an abuse of the process of the court.*

43. Thus it is clear that when the claim is made for rejection of plaint that it does not disclose of cause of action, it is the duty of the Court to

read the plaint in a meaningful manner. The term absence of cause of action and defective cause of action are two different aspects. In the case of **Jogeshwari Devi**(supra) the Apex Court has clearly observed that there is difference between non disclosure of cause of action and defective cause of action. While the former comes within the scope of Order VII Rule 11 the later is to be decided during the trial.

44. Whether a plaint discloses the cause of action or not is essentially a question of fact. However, whether it does or does not must be found out from the reading of the plaint itself. For that purpose the averment s made in the plaint in their entirety must be held to be correct. The test is as to whether the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

45. Plaint in the present matter, as discussed earlier and if read meaningfully would show that the claim raised by the plaintiff is based on their possession over their suit plot and the claim over their mundkarship of their suit house. When the defendants constructed an illegal structure as alleged , the plaintiffs objected to it and at that point of time, the plaintiffs were told that the defendants are the sole owners of the entire said property on the basis of Deed of Gift dated 22.11.2017.

46. Para 28 of the plaint shows that the Deed of Gift dated 22.11.2017, is a fraudulent document and on that basis the defendant constructed a



commercial building thereby affecting the possessory rights of the plaintiffs.

47. Para 29 of the plaint discloses the cause of action to file the suit which accrue to the Plaintiff for the first time in the month of December 2018, when the Plaintiff got the knowledge about the existence of Deed of Gift dated 22.11.2017 and when he got the knowledge that the Defendant no. 1 and 2 without any valid permission or licenses illegally constructed the commercial building. Para 32 of the Plaint states that such cause of action arose for the Plaintiff for the first time on 10.12.2018. The suit is for declaration of the Deed of Gift dated 22.11.2017 as null and void. Similarly, the Plaintiff also claimed that they be declared as co owners of the said suit property.

48. Thus a meaningful reading of the plaint would clearly go to show that there are specific averments which if considered as true at this stage, would entitle the plaintiff for a decree of declaration as prayed for. The cause of action is specifically mentioned at various places.

49. The learned Trial Court was totally confused with the locus of the Plaintiff and the cause of action. The discussion in the Impugned order shows that the learned Trial Court went ahead with the contentions raised by the Defendants that there are no pleadings as to how the plaintiffs are claiming any right in the suit property. The trial Court

observed that the nature of right is not pleaded, which is completely incorrect and so to say perverse as the pleadings speaks for otherwise. Non production of some documents cannot be a ground for rejection of plaint.

50. The learned Trial Court also observed that the claim of the defendant that the plaintiff is not having any right in the suit property and therefore they have no locus to challenge the Gift Deed . Such observation of the Trial Court are against the settled proposition of law as at this Stage only the plaint along with its documents could be looked into and not any amount of averments made by the Defendants, either in the written statement or any other application including the application for rejection of plaint. Whether the Plaintiffs are having right in the suit property, will have to be tested during trial and that could be one of the issues. The contention of the Plaintiff that they are in possession of the suit property on the basis of Agreement of Sale and payment of entire Consideration, clearly show the nature of right claimed by the Plaintiff over the suit property. It is no doubt true that the Plaintiff did not opt for specific performance of the agreement of sale, however, they are certainly entitled to defend/protect their possessory right over the suit property as claimed in the plaint. If the averments in the Plaint are considered to be true, it is clear that the Plaintiffs are claiming to be in possession of the suit property. And thus cause of action certainly accrue in their favour to challenge the actions

of the defendants in carrying out illegal structure and that too without any permissions in the suit property.

51. The Impugned Order, thus, is not only found to be perverse but needs to be quashed and set aside on both counts. Firstly, the Order is passed on a second application which ought not to have been entertained for the reasons that while filing the first application under Order VII Rule 11 CPC, the Defendants waived other grounds except the ground of the plaint barred by Law. Thus the second application ought not to have been entertained.

52. The plaint on its meaningful reading clearly discloses a cause of action and thus observations of the learned Trial Court in the Impugned order needs to be quashed and set aside.

53. Accordingly, the first appeal is allowed.

54. The Impugned Order dated 03.05.2023 below exhibit 22 is hereby quashed and set aside.

55. The application filed vide exhibit 22 under Order VII Rule 11 (A) of CPC stands rejection.

56. The plaint in Special Civil Suit No. 76/2019 is restored to the file of learned Trial Court. Parties shall bear its own costs. Decree be drawn accordingly.

**BHARAT P. DESHPANDE, J**