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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 136 OF 2024.

1. Mr. Anil Bhanudas Bhamaikar,
Son of late Bhanudas Bhamaikar,
48 years of age, married, Indian
National, and his wife,
2. Mrs. Avani Bhamaikar, Wife of
Anil Bhamaikar, Aged 34 years,
married, Indian National,
Both r/o H. No. 315, Mahalwada,
Marcaim, Ponda, Goa.
Ordinarily residing at Flat No. S-
3, Royal Chamber Building, At
Tisk, Ponda, Goa.Petitioners.

Versus

Mr. Gurudas Bhamaikar, Son of Hiru
Bhaimaikar, Age 68 years, R/o H. No.
315, at Mahal wada, Marcaim Village,
Ponda Goa.Respondent.

Mr Dinesh Naik with Ms Shruthi Arabekar, Advocate for the
petitioner.
Mr Kisan Surjuse, Advocate for the respondent.

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

Reserved on: **4th April 2024.**
Pronounced on : **22nd April 2024.**

JUDGMENT :

1. Rule. Rule is made returnable forthwith.
2. Heard finally with the consent.

3. Petition is challenging order passed by the learned District Judge-2 Panaji sitting at Ponda dated 17.10.2023, thereby allowing the appeal filed by the respondent.

4. Petitioners are the original defendants in a suit filed by the respondent/plaintiff for declaration and injunction. On appearance before the learned trial Court, the petitioners filed an application under Order 7 Rule 11 of the CPC for rejection of plaint on two folds grounds, firstly that suit is barred by law and secondly that there is no cause of action.

5. Learned trial Court vide its impugned order dated 6.5.2022 allowed the application under Order 7 Rule 11 of CPC and rejected the plaint. Original plaintiff being aggrieved by such order, preferred an appeal before the District Judge Panaji which was allowed by the impugned order.

6. Mr D. Naik, learned counsel appearing for the petitioners would submit that first of all suit filed is a clear abuse of process of law as a declaration claimed therein is barred by law as well as by limitation and so called cause of action mentioned therein is illusory. He submits that contents of the plaint are not facts alone as required and many things have been inserted in it which are unwarranted. He submits that so called declaration as sought by the plaintiff is to declare public documents as obtained by fraud and further

restraining the petitioners from producing such documents in mundkarial proceedings. He submits that plaintiff knew about the existence of such documents in the year 2015 itself whereas suit was filed in the year 2021 i.e. beyond the period of three years as far as declaration is concerned. He then submits that suit as framed under the pleading is completely barred under Section 170 of the Representation of the People Act.

7. Mr Naik would submit that learned trial Court after meaningful reading of the plaint, cause of action and the provisions of the Representation of the People Act found that the plaint needs to be rejected. However, the first appellate Court has completely lost sight of the findings given by the trial Court and went on to discuss about the Mundkarial Act which is not at all necessary to be considered. The first appellate Court simply gone by the pleadings wherein some cause of action is mentioned and observed that the suit is within limitation. He submits that these observations of the first appellate Court is not on the basis of meaningful reading of the plaint and therefore, such observations are perverse and require to be quashed and set aside.

8. Per contra learned counsel Mr Surjuse appearing for the respondent would forcefully submit that petitioners who are the relatives of the plaintiff obtained Election Photo Identity Card, ration card and even certificate from the village panchayat by playing fraud

on these authorities only to deprive the plaintiff from claiming their bonafide right to purchase the mundkarial house. He claims that the father of the petitioners shifted his residence to Ponda way back and was never residing in the mundkarial house. However, petitioners only with an eye on the mundkarial right clandestinely obtained the documents regarding Election Photo Identity Card, ration card showing their residence as mundkarial house with a malafide intention to deprive the plaintiff his right to purchase the mundkarial house. He submits that there was clear understanding that only the plaintiff would claim mundkarial right over the house which is small structure, however such understating has been now tried to be disturbed by the attempts made by the petitioners when they started to claim their share in the mundkarial house and during the purchase proceedings.

9. Mr Surjuse would submit that by obtaining such document from the Election Officer as well as ration card, the petitioner has played a fraud on these authorities which ultimately going to affect the rights of the plaintiff and therefore he filed a suit for declaration and injunction.

10. Rival contentions fall for determination.

11. In the case of ***Dahiben Vs. Arvindbhai Kalyanji***

Bhanusali ¹, the Apex Court while considering the scope of Order VII Rule 11 of CPC and after discussing the earlier decisions on these aspects summarised it in paragraphs 23.3 till 24.4 as under:-

- “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 [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (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 an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

- 23.5 *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*
- 23.6 *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*
- 23.7 *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."

(emphasis supplied)

- 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. [Sopan Sukdeo Sable v. Charity Commr., (2004) 3 SCC 137]
- 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 [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

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

- 23.12 *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].*
- 23.13 *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 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 [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

- 23.15 *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaintiff "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaintiff 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 [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] 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.”

(emphasis supplied)

- 24.2 *In T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] 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....”

(emphasis supplied)

- 24.3 *Subsequently, in ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] 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* [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] 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.”*

12. In the case of ***M/s Frost International Limited VS M/s Milan Developers and Builders (P) Limited and anr.***², the Apex Court observed that declaratory relief which would deprive the defendant from his right to file complaint under Negotiable Instruments Act is barred by law. In this matter also while placing reliance on the various earlier decisions, the Apex Court has observed that such declaratory relief which affects the right of a party to file a complaint is clearly barred.

13. This Court in case of ***Shri Raia Rudraji Sinai Salelicar vs Smt. Laxmibai Kasturchand and others***,³ ***Shri Capistrano Gomes and another Vs State of Goa and others***⁴ and recently in the case of ***Avinash Tanu Govekar and others***

² 2022(4) ALL MR 742 (SC)

³ (2024)1 Goa Law Times 60

⁴ (2023) (2) Goa L. R. 222(Bom)(PB)

Vs Mrs Anjani A. Govekar and another⁵, discussed the scope of Order 7 Rule 11 of CPC and more particularly the cause of action and limitation.

14. Keeping in mind the above settled proposition, let us examine the averments made in the plaint in a meaningful manner so as to consider as to whether such relief is barred by law or whether there is any actual cause of action to entertain such a suit. It is also necessary that reading of the plaint should be meaningful. In case of vexatious or without any merit and not disclosing e right to sue, Court would be justified in rejecting the plaint.

15. Section 170 of the Representation of the People Act, 1951 reads thus:-

“Jurisdiction of the Civil Court barred – No Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by any returning officer or by any other person appointed under this Representation of the People Act in connection with an election”

16. The above provision would clearly go to show that any decision or action taken by the Returning Officer or by any other person appointed under this Representation of the People Act in connection

5 Civil Revision Application No. 6 of 2024 decided on 22.2.2024

with an election cannot be questioned in a civil Court.

17. Plaintiff is definitely questioning the issuance of Election Photo Identity Card in favour of the petitioners, by the concerned authority who prepared the electoral roll for the constituency in which mundkarial house exists. Admittedly, preparation of election roll is the duty of the Election officer as defined in Part II-A of the Representation of the People Act. The issuance of Election Photo Identity Card is pursuant to preparation of electoral roll and inclusion of the name of said person in such electoral roll. Unless the name appears in the electoral roll Election Photo Identity Card could not be issued. Plaintiff in the suit are directly challenging the Election Photo Identity Card issued in favour of the petitioners by concerned authority, without challenging their names appearing in the electoral roll of the said constituency.

18. Order VI of CPC deals with pleadings generally. Rule 2 provides that every 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 or defence as the case may be, but not the evidence by which they are to be proved. Rule 3 provides form of pleadings which is given in appendix A. Rule 4 deals with particulars to be given where necessary and particularly in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be

necessary beyond such as are exemplified in the forms aforesaid, particulars shall be stated in the pleading.

19. Rule 16 of Order VI deals with striking out pleadings. This rule provides that the Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading(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.

20. Suit which is styled in the present matter is under 31, 34, 36 and 38 of the Specific Relief Act for declaration, permanent injunction and other consequential reliefs.

21. Meaningful reading of the plaint would go to show that basic challenge is against three documents which defendants obtained with regard to inclusion of their names in Election roll, ration card record and certificate issued by the Village Panchayat. First of all, all these documents are issued by public office and after considering the procedure for issuance of such documents. The main contention of the plaintiff is that by obtaining such documents, defendants/petitioners have played fraud on the said authorities and now they want to rely upon these documents in a purchase proceedings before the learned Mamatdar which will prejudice the rights of the plaintiff.

Prayers in the suit read thus:-

- a That it be declared by this Hon'ble Court that these three documents referred to above in the plaint which are fraudulently prepared by the Defs. in respect of the suit house No.315 of village Marcaim and as well as entries made in the E.Roll of 23 Marcaim A.C. at Sr.No.1 and 7 in the part 8 of draft roll published on 16-11-2020 are illegal, invalid, null, void, and bad in law and it does not qualify to receive it in evidence before any Court of law or authorities concerned;
- b That this Hon'ble Court be pleased to grant an perpetual injunction or order or decree to restrain the Def.No.1 and 2 or any other person acting on their behalf from relying upon these three documents as well as to restrain them from relying upon the entries made in the E. Roll of 23 Marcaim A.C. at Sr. No. 1 and 7 in part 8 of draft roll before any Court of law or before the authorities concerned;
- c That this Hon'ble Court be placed to decleare that the claim raised by the Def. No.1 that the suit house is an ancestral house is baseless and not enforceable;
- d For the cost of this suit;
- e For such further and other relief/s as this Hon'ble Court may deem fit and proper in the interest of justice and/or as the circumstances may require from time to time.

22. Three documents which plaintiff referred are found in paragraph 4 of the plaint i.e.

- (1) Copy of the EPIC card issued by defendant no.1 by ERO-23 and Marcaim, A.C. of Ponda Taluka.
- (2) Copy of ration card issued to the defendant no.1 and his family members by the Inspector of Civil Supply, Ponda Taluka;
- (3) A certificate dated 29.1.1990 issued by Sarpanch of Village

Panchayat Marcaim of village Ponda Taluka.

23. First document is issued by the officer empowered under the Representation of the People Act i.e. Election Officer of Marcaim Ponda Goa. The contention of the plaintiff that these documents were produced by the defendants along with their written statement in the proceedings before the Mamlatdar in the year 2018 and, therefore, suit is filed within three years of declaration. Election Photo Identity card is issued only when a name of a person is recorded in the electoral roll of a particular constituency. Only because election identity card is produced in some Court proceedings, it cannot be giving any cause of action to file a suit specifically when the fact that the name of such person appearing in the electoral roll was very much known to the plaintiff much prior to production of such documents. This fact is admitted by the plaintiff himself which is found in plaint in paragraph no.8. Plaintiff admitted that the name of the defendant was enrolled in the electoral roll of Marcaim Village showing his residence as mundkarial house in the year 2007 itself.

24. Though it is contention of the plaintiff that such inclusion was by misleading the authority and with a clandestine move to falsely claim any right to the mundkarial house. However, fact remains that it was within the knowledge of the plaintiff from the year 2007 itself. Even the plaintiff raised objection regarding inclusion of the name of defendant no.1 in the electoral roll of Marcaim and he has also placed

on record his copy of objection, inquiry notice and the order passed by the Mamatdar/ERO rejecting the contention of the plaintiff. Thus, plaintiff raised objection before the competent authority regarding inclusion of name of defendant no.1 in the electoral roll of Marcaim and more specifically showing his residence as mundkarial house. However, such objections were rejected. It is the fact that even an appeal is filed challenging such order which is pending for adjudication. Thus only production of Election Photo Identity Card in the year 2018 in the Court of Mamatdar would not be giving any cause of action for the purpose of seeking declaration since the plaintiff knew from the year 2007 itself that the name of defendant no.1 is included in the electoral roll of Marcaim and even he challenged it before the competent authority constituted under the Representation of the People Act.

25. Besides, bar under Section 170 of the Representation of the People Act would come into play and no civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under the Representation of the People Act in connection with an election. Preparation of electoral roll is definitely in connection with an election. Election officer is authorised to decide whether to include name of a person in the roll or to reject it. Such authority cannot be challenged before the Civil Court as such action is

barred under Section 170 of the Representation of the People Act.

26. Thus it is clear from the above provisions that once a document is created under the Representation of the People Act i.e. electoral roll of a particular constituency and on the basis of such electoral roll, an Election Photo Identity Card is issued by the competent authority under the Representation of the People Act. Same cannot be challenged in a civil Court as tried to canvas by the plaintiff in this suit.

27. Besides, it is clear that plaintiff had knowledge in the year 2007 itself that such name of the defendant no.1 is included in the electoral roll, which was subsequently challenged by the plaintiff before the competent authority in the year 2015, it cannot be said now that only because such Election Photo Identity Card is produced in a proceeding before the Mamlatdar, the plaintiff got a fresh cause of action.

28. It is a well settled proposition of law that for filing a suit for declaration cause of action has to be from the date of knowledge of the petitioner and not from any subsequent event. The contention in the plaint that when the Election Photo Identity Card was placed on record in the year 2018, cause of action accrued in favour of the plaintiff, cannot be accepted for the simple reason that first of all the issue of Election Photo Identity Card is clearly on the basis of name

appearing in the electoral roll. Unless name exists in the electoral roll, Election Photo Identity Card cannot be issued. It is not the case of the plaintiff that inspite name of defendant no.1 not included in the electoral roll, an Election Photo Identity Card is issued. In fact plaintiff suggests that name of defendant no.1 was inserted in the electoral roll of said village Marcaim in the year 2007 itself. Thus knowledge of the plaintiff about inclusion of name of defendant no.1 in the electoral roll is from the year 2007. Surprisingly, plaintiff is not challenging inclusion of the name of defendant no.1 in the electoral roll in the present proceedings. It is only his case that the Election Photo Identity Card issued in favour of defendant nos.1 and 2 were obtained by fraud. When the plaintiff challenged the name of the defendant no.1 being included in the electoral roll in the year 2015 itself, he was aware that Election Photo Identity Card is issued.

29. Article 56 of the Limitation Act deals with declaration of forgery of the instrument issued or registered and the period is for three years and the time from which period began to run when the issue of registration becomes known to the plaintiff. Thus plaintiff by clever drafting is not challenging the registration of the name of defendant no.1 in the electoral roll in the year 2007 itself since he knew it from the beginning, therefore period of challenge for such registration of the name in the electoral roll is from the date of knowledge of the plaintiff. Cleverly the plaintiff is now challenging

the Election Photo Identity Card as being obtained by fraud and produced in the year 2018. As discussed earlier, Election Photo Identity Card could be issued only when the name of such a person exists in the electoral roll. By deliberately avoiding to challenge the registration of the name of defendant no.1 in the electoral roll of Marcaim village and only challenging the Election Photo Identity Card, plaintiff intended to create frivolous litigation is clearly demonstrated.

30. On both counts i.e point of limitation as well as section 170 of the Representation of the People Act, challenge to document i.e. Election Photo Identity Card issued in favour of defendant nos.1 and 2 cannot be entertained in this suit.

31. Remaining two documents must be decided with some fate. Ration card was issued in favour of defendants way back in the year 2007 itself. Certificate of village panchayat was in fact issued in the year 1990 which is clear from the contention in paragraph 4 of the plaint itself. There is absolutely no whisper in the entire plaint that the plaintiff was not aware of these documents and that they came to know only when such documents were placed on record in the mudkarial proceeding along with written statement on 5.6.2018. In fact when the plaintiff challenged inclusion of name of defendant no.1 in the electoral roll, in the year 2015 before the concerned authority, this fact was brought to the knowledge of the plaintiff.

32. Even otherwise, the contention of the plaintiff that defendant nos. 1 and 2 be restrained from relying upon these documents before the Court of law i.e. Mamlatdar Court by grant of declaration and injunction, would be restraining such parties from producing evidence available with them to defend their case.

33. Reverting back to the pleadings and as discussed earlier with regard to Order VI of CPC it is now high time for the learned civil Court to read the pleading and more particularly the plaint and written statement meaningfully so as to find out whether plaint/written statement contains pleading in a precise manner. For the sake of repetition, Rule 2 of Order VI will have to be taken into account wherein it provided 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 but not the evidence by which they are to be proved.

34. Meaningful reading of the plaint in the present pleadings first of all would go to show that it contains not only pleadings but submissions, arguments, evidence and what not. Pleadings are not in concise form containing material facts. Each paragraph gives specific argument, submission and even reasoning. There is no need to discuss in detail contents of the plaint, however most of the paras are verbose containing not the facts but submissions as well as

arguments in support of the case of plaintiff. In paragraph 12, plaintiff is trying to give grounds for the purpose of supporting the contention raised in the plaint. These grounds not only contains submissions as well as arguments, which are totally unnecessary in a plaint. Paragraph 19 of the plaint gives reasons for the contentions which are again cannot be considered as facts. Even otherwise most of the contents of the plaint are repetition by only changing words.

35. Thus, whenever a party comes with such plaint, it is the duty of the civil Courts to exercise its valuable right under Order VI of CPC and more specifically Rule 2 read with Rule 16. It is boundant duty of the civil Court to keep the pleadings only with respect to material facts on record and to strike out other unwanted and unnecessary contentions by exercising its power under Rule 16 of Order VI of CPC. In this matter the ground of strike out the pleadings as found in Rule 16 are clearly applicable. Most of the pleadings in the suit filed by the plaintiff are found to be unnecessary, scandalous, frivolous or vexatious. If such pleadings are allowed to be kept on record, defendants will have to deal with it in the Written statement which tends to prejudice, embarrass or delay the fair trial in the suit. If such pleadings are allowed to be retained which are in the form of submissions, arguments repetition, has to be considered as an abuse of the process of the Court. Accordingly, duty of the civil Court while reading of the plaint may at any stage of the proceedings order to

struck out or amended any matter in any pleadings for the purpose of issuing summons to the other side, must exercise its power under Order 6 Rule 16 of CPC so as to strike out unnecessary and unwanted allegations which are not considered as material facts for deciding the real controversy in dispute.

36. Learned trial Court while deciding the application under order VII Rule 11 of CPC though by cryptic order however, observed in paragraph 7 that since the plaintiff took steps to challenge the documents in the year 2015 before the competent authority and that there is clear bar under Section 170 of the Representation of the People Act, plaint needs to be rejected. To my mind, such reasons disclosed by the learned trial Court is fully justified though not elaborated as required.

37. Learned first appellate Court without considering the provisions of Section 170 of the Representation of the People Act and simply and blindly following the pleadings mentioned in the suit about cause of action, reversed the said order.

38. First of all it was duty of the first appellate Court to read the plaint meaningfully and to find out clever drafting so as to nip the matter in bud at the initial stage itself. Simply because the plaint disclose cause of action on 5.6.2018, same cannot be blindly accepted. In fact learned first appellate Court has completely ignored the

settled proposition of law as laid down by various decisions of the Apex Court and of this court as discussed earlier, including the case of **Dahiben** (supra).

39. M/s Frost International Limited (supra) deals with right of a party to file proceedings under Section 138 of the NIA on a basis of a cheque, only on the ground that such cheque was issued for security. Observation in paragraph 35 that no suit can be permitted to be filed seeking relief which would frustrate the defendants from initiating the proceedings against the plaintiff and seeking any other remedy in law. Matter in hand is quite similar in nature. Prayer clause in the suit is seeking a declaration that Election Photo Identity Card, ration card and certificate issued by village panchayat cannot be used by defendant nos. 1 and 2 in a proceeding filed before the Mamlatdar and that such documents are not qualified to receive in evidence before any other Court of law or authority, on the ground that such documents are obtained fraudulently. These documents are already relied upon by defendant nos. 1 and 2 in the proceedings filed by the plaintiff before the Mamlatdar apart from fact that such relief is time barred as plaintiff knew about such documents much prior to 2015, fact remains that parties cannot be restrained from relying on such documents in a Court of law. The question as to whether documents were obtained by fraud or otherwise can be gone in to before the concerned authority. As far as declaration sought by

the plaintiff is concerned, in this suit, the same is clearly barred by law of limitation as discussed earlier. By clever drafting and by creating illusory cause of action, plaintiff cannot save his plaint from being rejected.

40. In the ***South West Port Limited Vs State of Goa and ors.***⁶ reliance of which is placed by learned counsel for respondent, is in fact supporting the case of the petitioners. In that matter, Court was dealing with Article 226 of the Constitution of India and the jurisdiction of the Writ Court in doing justice. First of all the present petition is basically under Article 227 of the Constitution of India concerning supervisory jurisdiction. Even if it is considered as tried to canvas by the learned counsel for the respondent, observation in paragraph 31 in the case of ***South West Port Limited*** (supra) would give power to this Court to do substantial justice. The contention of the learned counsel for the respondent that the party should invoke extraordinary jurisdiction of this Court, must disclose all material facts even if they are against him. However in this matter, respondent failed to point out about suppression of the facts by the petitioner. The question is only to decide the matter effectively. Therefore, from the above observations it is clear that plaint as filed before the trial Court is clearly barred on two grounds i.e. barred by law as well as barred by limitation.

⁶ 2018(5) ALL MR 852

41. The impugned order passed by the first appellate Court is therefore quashed and set aside whereas order passed by the learned trial Court is restored.

42. Rule is made absolute in the above terms.

43. Writ Petition stands disposed of.

BHARAT P. DESHPANDE, J.

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS
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