

IN THE COURT OF CIVIL JUDGE-I (SR. DIV.), PIRO AT BHOJPUR

Title Suit No. 147 of 2021

Nikhat Tabassum vs. Mohammad Izrail Khan & Ors.

S.L. No.	Date of Order of Proceedings	Order with signature of Court	Office action taken with date/ Remarks
	21.07.2026	<u>ORDER</u> Attendance is filed on behalf of the plaintiff and defendants through learned counsels. On call, ld. counsel on behalf of the plaintiff and defendants appeared. Ld. counsel for the defendant no. 2 has moved his petition dt. 17.02.2026. It has been prayed to reject the plaint of the plaintiff and dismiss the suit with cost on the ground that title suit no. 122 of 2021 is already pending for adjudication before the competent Civil Court, wherein the defendant has sought declaration of title over the same suit land and also cancellation of the alleged sale deed. The plaintiff was fully aware of the pendency of T.S. 122 of 2021, yet deliberately entered into an alleged transaction during pendency of the suit and has now filed the present damages suit only as a counterblast to the said title suit and defendant is not a party to the alleged sale deed. It has been further submitted that the present suit is hit by doctrine of lis pendens under Section 52 of the Transfer of Property Act, and no right or liability can be created against the defendant on the basis of a transaction entered into during pendency of litigation. The plaint is completely silent as to how the defendant is legally liable for damages, how any loss was caused by the defendant and what legal duty of the defendant was breached. The defendant was totally stranger to a contract in absence of any privity of contract or tortious act. It is further submitted that no cause of action has ever accrued to the plaintiff and material fact of the case has been suppressed. On these grounds, he prays to reject the plaint. The rejoinder has been filed on behalf of plaintiff on 02.03.2026/18.03.2026 with a prayer to reject the petition dated 17.02.2026 on the grounds that present suit is filed for compensation of Rs. 25,00,000/- (twenty five lakh rupees) on account of humiliation, torture, tension and monetary loss against the defendant nos. 1 to 4. It is submitted that second relief sought is for setting aside sale deed no. 1360 dated 19.03.2021 which was executed by defendant no. 1 as mentioned in schedule 1 of the plaint. The plaintiff has purchased the suit property from the real land owners, defendant no. 5 Rehsun Nisha and defendant no. 6 Taishun Nisha vide sale deed no. 3191 dated 31.01.2020 and has acquired valid title and lawful possession. The plaintiff's name was duly mutated in the records of Circle Officer Piro after spot verification and in accordance with the mutation rules and the plaintiff has been regularly paying land revenue. The defendants were trying to dispossess the plaintiff from the suit land. The claim made by defendant no. 2 is that he had purchased the property from defendant no. 3 and 4 vide sale deed no. 1360 dated 19.03.2021. After obtaining the certified copy of the said deed and upon inquiry, the plaintiff approached this Court seeking above mentioned two reliefs and has duly paid the requisite ad valorem court fee. Plaintiff served a legal notice dated 26.04.2021 upon defendant no. 1 to 4 and defendant no. 4 has accepted the notice whereas defendant no. 3 refused to receive it,	
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defendant no. 2 had changed his address and notice sent to defendant no. 1 was returned because the address mentioned in the sale deed dated 19.03.2021 was false. The first legal notice dated 26.03.2021, second legal notice dated 26.04.2021 and another dated 03.08.2021 were sent to their respective addresses but the defendants either refused to accept or the notices were returned. These facts clearly constitute a continuing cause of action. This petition for rejection of plaint has been brought after five years of institution of the suit. Therefore, the defendant's petition under Order 7 Rule 11 C.P.C. seeking rejection of the plaint after five years is wholly misconceived. The petition does not contain the signature/verification of the defendants. In such circumstances, the said petition has no legal significance and is liable to be rejected with heavy cost.

Heard the learned counsels for the parties and perused the case record. The plaintiff has brought this suit against the defendants praying *inter alia* to pass a decree for Rs. 25,00,000/- (twenty five lakh rupees) for compensation of humiliation, torture, tension and monetary loss and secondly sale deed no. 1360 dated 19.03.2021 executed by defendant no. 1 be set aside.

In this case, the defendant no. 2 raised only one ground of attack namely, that the plaint does not disclose a cause of action for institution of the suit. So far as other grounds raised by defendants are concerned; those do not attract or fail under Order 7 Rule 11 C.P.C. Hence, this court will firstly refer the relevant law on the point. Nonetheless, the Court will examine the petition in detail.

Only plaint has to be seen:-

It is noteworthy to mention that in case of **Sajjan Sikaria vs. Shakuntala Devi Mishra**, it is observed that while dealing with an application under Order VII, Rule 11 of the C.P.C. there is no requirement to consider the written statement filed by the defendant and the same was also observed in case of **Saleem Bhai vs. State of Maharashtra**.

Hence, in this case for the purpose of deciding the present petition in question, the Court will only look into the pleading of the plaintiff i.e. plaint.

Since, the defendants have mainly challenged the plaint on the ground that the plaintiff does not have cause of action for institution of the suit and therefore it is necessary to understand the term 'cause of action'.

Cause of action:-

(I) It has been held that while considering the rejection of plaint under Order VII Rule 11 C.P.C. the strength or weakness of the plaintiff's case is not to be seen and what is required to be disclosed by the plaintiff is clear right to sue. (*Astral Cables Ltd. Vs. The NSCI* 332: 2011(7) MLJ 438 (DB)).

(II) It is to be noted that under Order VII Rule 11 of CPC, there is a requirement of inclusion of cause of action. Ordinarily, a Court of law is to presume that every allegation in the plaint is true. As a matter of fact, when the plaint raises arguable points which require deeper deliberation and scrutiny, the same cannot be rejected in the eye of law. Also, that, a

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plaint cannot be rejected under Order VII Rule 11 of CPC, where the suit is required to be heard on merits after taking evidence in a given case. However, if the averments made in the plaint and the documents relied upon establish a cause of action, then the plaint should not be merely rejected based on the reason that the averments are not enough to prove the facts mentioned therein. Moreover, a Court of law can examine the parties to clear the pleadings. (R. Perumal Naicker Vs. R. Sakrapani, (2013) 6 MLJ 119, Para 10, 11).

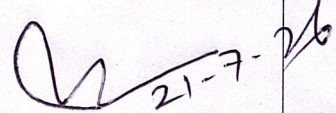
(III) The Court must be examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. (Dahihben Vs. Arbinbhal Kalyanji Bhansai) 2020 SCC Online 563, Para 14).

(IV) The test is to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed in Hardesh Ores (P) Ltd. Vs. Hede and 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 word. (Liverpool & London S.P. & I Assn. Ltd. Vs. M.V. Sea Success I & Anr. Para 139).

The plaintiff vide para 8 & 9 has described the facts whereby right to sue arose to him. The plaintiff has described the sequence of events from sending the notice till non-reply and non-action by the defendants. The different dates on which cause of action arose has been well written in the plaint. On the basis of above prepositions of law, it is clear that this court has to construe the plaint as it stands and this court has to presume every allegation raised in the plaint to be correct at this stage. Thus, the plaintiff has clearly described the cause of action for institution of the suit.

In the light of above propositions of law, this Court is of the considered opinion that the plaintiffs have stated that the cause of action arose to him, vide para 8 & 9 of the plaint. This Court is of the opinion that while dealing with the petition for rejection of plaint, This Court has to presume that every allegation in the plaint is true and the Court is not supposed to examine the plaintiff's case in minute detail, but is of the considered opinion that the reliefs sought by the plaintiffs by this legal proceeding is tenable in law. Hence, the petition filed on behalf of defendant no. 2 is without merit and has no force of law. The same is liable to be rejected and therefore, the petition is hereby rejected for want of any merit.

Put up on 28.08.26 for further proceedings.


Civil Judge (Sr. Div.)-I
Piro at Bhojpur