

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

**Title Suit No. 178 of 2019**

**Akhtar Khan Vs Kedarnath Prasad & Others**

S.L. No.	Date of Order of Proceedings	Order with signature of Court	Office action taken with date/ Remarks
	01.12.2025	<p style="text-align: center;"><b><u>ORDER</u></b></p> <p>Attendance filed on behalf of the parties through learned counsel. Ld. counsel for the defendant 2<sup>nd</sup> set has moved his petition dt. 23.10.2021 filed U/O VII Rule 11(a) and (d). The defendant 2<sup>nd</sup> set has prayed in his petition that the suit which has been filed by the plaintiff is not maintainable in the eyes of law. The plaintiff has filed this suit with prayer to pass a decree for specific performance of the contract be passed in favor of the plaintiff. It is stated that rest amount of rs. 4,50000/- be taken from the plaintiff and defendant 1<sup>st</sup> party be directed to execute the deed in his favor failing which the same may be ordered to be done by the process of Court. It has been further prayed on behalf of plaintiff that the deed in the name of defendant 2<sup>nd</sup> party be declared as illegal and inoperative. It is submitted on behalf of defendant that the plaintiff has no cause of action. It is further pleaded on behalf of defendant that the plaintiff has not submitted the documents in support of his case as the deed no. 12882/ 2010 is not in existence. The actual state of affairs is that the defendant 1<sup>st</sup> party has executed deed no. 11924 dated 08.12.2010 in favor of defendant 2<sup>nd</sup> party in relation to disputed land. It is further pleaded that the case of the plaintiff is hit by Section 23 of Indian Contract Act. It is further submitted that the said deed executed in favor of plaintiff is illegal. On these ground, he prays to reject the petition.</p> <p>The rejoinder which has been filed on behalf of plaintiff on 17.12.2021 with a prayer to reject the petition of the defendants on the ground that it is vague, vexatious and malafied in nature. This petition is pre-mature and cannot be considered unless defendant no. 1 does not file his written statement. The facts which is mentioend in the defendants' petition is completely wrong. Paras no. 1 to 16 of the petition are completely wrong and illegal. It is also submitted that as this juncture the pure question of law is decided. It is further pleaded that cause of action is to be seen in the light of all the facts mentioned in the plaint.</p> <p>Heard the learned counsel for the parties and perused the case record. The plaintiff has brought this suit with prayer to get the sale deed executed by defendant 1<sup>st</sup> party in his favor upon the receipt of balance consideration amount of Rs. 4,50000/- and has also prayed for declaration of claim by defendant no. 2 upon the disputed land to be wrong and illegal.</p> <p>This petition has been filed on behalf of defendant 2<sup>nd</sup> party under Order VII Rule 11 (a) and (d) which read as under:-</p> <p>(a) Where it does not disclose a cause of action;</p> <p>(b)...</p> <p>(c)...</p> <p>(d) where the suit appears from the statement in the plaint to be barred by any law;</p>	

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It is necessary to know as to what is meant by cause of action before going into the question as to whether the plaint discloses cause of action or not. In this respect, we may refer the observation of Hon'ble Supreme Court:-

"The Court must 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." **(Dahiben Vs. Arvinbhai Kalyanji Bhansai 2020 SCC On line 563, Para 14).**

In this case the defendants have raised mainly two important grounds of attack namely, the plaint is time barred and it does not disclose cause of action. Hence, this court will firstly refer the relevant law on the point.

**Only plaint has to be seen:-**

It is note wrothy to mention that in case of **Sajjan Sikaria vrs. 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 to written statement filed by the defendant and the same was also obsrved in case of **Saleem Bhai vrs. State of Maharashtra**.

**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 casue 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 requires deeper deliberation and scrutiny, the same cannot be rejected in the eye of law. Also, that, a 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 i nthe plaint and the documents rerlied 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 acuse 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**

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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**).

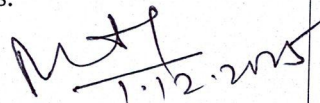
While dealing with an application for rejection of plaint under Order 7, Rule 11 CPC, Court cannot go into disputed question of fact: While dealing with an application for rejection of plaint under Order 7, Rule 11 CPC, Court cannot go into disputed question of fact but while granting temporary injunction under Order 39, Rules 1 & 2 CPC, Court can do so. [**M. Gurudas Vs. Rasaranjan, (2006) 8 SCC 367.**]

The defendant has nowhere described the facts on the basis of which the plaint has been prayed to be rejected being barred by any law. Hence, this Court cannot go into that question.

From perusal of the plaint vide para no. 11, 12 and 13, it is clear that the plaintiff has narrated the facts leading to institution of this suit.

In the light of above propositions of law, it is clear that at this juncture, 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 plaintiff by this legal proceeding is tenable in law. Hence, the petition filed on behalf of defendants 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 08.12.2025 for further proceedings.

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