

IN THE COURT OF MUNSIFF-II, BHOJPUR AT ARRAH
Title Suit No. 382/2021
Kamlesh Yadav Vs. Mst. Hiramuni Devi & Ors.

DATE OF ORDER	ORDER WITH INITIALS OF THE JUDGE	REMARKS
31.03.2023	Record is fixed for order on the petition dt. 02.11.22 filed on behalf of the defendant second set. Defendant second sets have filed a petition under Order VII rule 11 read with Order VII rule 14 of Code of Civil Procedure (herein after referred as CPC), wherein it has been stated that the plaintiff at para no. 4 of the plaint has made an allegation of illegal possession against the defendant on the basis of possession and new survey entry has been prepared in their name. It has been stated that present suit has been filed on behalf of the plaintiff for the redemption of mortgage but the defendant is in possession over the suit land since 1923 and the defendant has his own house over the suit land. It has further been stated that suit land was the property of the Vishwanath Yadav, who is ancestor of the defendant and the defendant's ancestor has purchased the same, plaintiff has also admitted that there is illegal possession of the defendant over the suit land. Moreover, it has been stated that ancestor of the defendant has accepted the compensation as some part of suit land has been acquired by the Government of Bihar for construction of dam. It has also been stated that there has been partition	

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filed any reply in the written statement and the plaintiff has elaborately discussed the details of mortgage in the para- 9 of the plaint and also stated that if the defendant is not holding the same as mortgagee then at what capacity they have been holding the suit property and the plaintiff has filed the present suit for redemption of mortgage not for the declaration of the title. Accordingly, it has been prayed that petition of defendant shall be rejected.

Heard the Ld. Counsel appearing on behalf of the parties at length.

Perused the record. On perusal of record, it appears that present suit has been filed on behalf of plaintiff against the defendant for redemption of the mortgage of Schedule -1 **property of Plaintiff** (herein after refereed as Suit land).

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Before this, I deal with the said petition here, let me mention the law as Rejection of Plaint. Order VII, Rule 11, CPC provides as follows:

11. "Rejection of plaint: - The plaint is liable to 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

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the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments.

In *Azhar Hussain v. Rajiv Gandhi*, 1986 AIR 1253, Hon'ble Supreme 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:

"The whole purpose of conferment of such power 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 if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. Under Order VII Rule 11, a duty is cast on the Court to determine

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whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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

Order 7 Rule 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 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

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witness merely to refresh his memory.

Having regard to Order VII Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order VII 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. 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. 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.

The test for exercising the power under Order VII 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 & Anr*, (2004) 9 SCC 512, which reads as :

“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

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but to reject the plaint.

The supreme court has discussed the the "Cause of action" in *Swamy Atmanand v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, where it has been held that :

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an 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".

Further, the Hon'ble Supreme Court in *T. Arivandandam v. T.V. Satyapal & Anr.* (1977) 4 SCC 467, has held that while considering an application under Order VII 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: -

5. ...The learned Munsiff 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 O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of

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action, nip it in the bud at the first hearing ...”

Moreover, the Supreme Court in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, (1998) 2 SCC 170*, has 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.

If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, Hon’ble Supreme Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal, (2017)13 SCC 174*, held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage.

(R)

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.

Keeping in mind the well settled legal position as discussed above, I may now proceed to analyse the averments in the plaint, as filed by the defendant, to discern whether it is a fit case for rejection of the plaint under Order VII Rule 11 (a) & (d) of the CPC.

The plaintiff has filed the present suit for redemption of mortgage. The plaintiff has stated that mortgage would be oral and same has not been registered as the valuation is less than Rs 100/-.

The plaintiff has stated at para-4 of his plaint that “ यह की वादी के पूर्वज या वादी के खानदान के कोई भी व्यक्ति तकरारी मुंदरजे जमीमा नंबर-1

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को प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष के पूर्वज या प्रतिवादी प्रथम पक्ष या प्रतिवादी द्वितीय पक्ष या किसी भी दिगर व्यक्ति को बय नहीं किया है बल्कि तकरारी जमीन को प्रतिवादी गण अवैध तरीके से अपने कब्जे में बंधक के रूप में रखकर उससे आर्थिक लाभ उठाते आ रहे हैं जिसकी जानकारी वादी या वादी के खानदान में किसी भी व्यक्ति को नहीं था । प्रतिवादी गण को तकरारी जमीन पर किसी तरह का Right title एवं interest हासिल नहीं है सिर्फ दखल कब्जा के आधार पर हाल सर्वे में खतियान रैयती पर्चा में प्रतिवादी प्रथम पक्ष अपने पिता बांके बिहारी एवं राम बहादुर यादव तथा प्रतिवादी द्वितीय पक्ष यानी प्रतिवादी नंबर 3 मुनि यादव अपने पिता बंगाली प्रतिवादी नंबर- 4 अपने बाबा लाल बहादुर प्रतिवादी नंबर 5 व अपने पिता डिग्गी यादव तथा प्रतिवादी नंबर 7 अपने पिता अंकरी यादव तथा मां सखी कुंवर का नाम बिना किसी Registered deed of transfer के दर्ज करा लिए हैं यद्यपि कि तकरारी जमीन जो वार्ड नंबर 30 के अंदर है का हाल सर्वे खतियान अंतिम रूप से फाइनल नहीं हुआ है जिससे वादी

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अभी गलत सर्वे इंद्राज के खिलाफ सर्वे फाइनल होने पर अलग से कार्रवाई करेगा क्योंकि बिना सर्वे फाइनल हुए गलत सर्वे इंद्राज के विरोध सिविल सूट दाखिल नहीं हो सकता है Reported in 2016(3) P.L.J.R page 114 (SC) अभी वादी सिर्फ तकरारी जमीन जो mortgage के रूप में प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष mortgagee की हैसियत से वादी से छुपा कर रखे हैं । Redeem कराने के लिए वर्तमान वाद दाखिल कर रहा है Settled principle of Law है कि Once a mortgage always a mortgagee .”

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Further, plaintiff has stated at para no. 8 of the plaint that “यह की वर्तमान Mortgage Suit दाखिल करने के पूर्व दिनांक 18.05.2021 को वादी अपने अधिवक्ता से प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष के पास दो अलग-अलग यानी प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष को निबंधित डाक से अलग-अलग इस आशय का नोटिस भिजवाया कि खाता नंबर 62 एवं खाता नंबर- 05 के जमीन जो वादी का पैतृक जमीन है को आप लोग अपने पूर्वज के समय से किसी कागजात के आधार

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पर जोत आबाद कर रहे हैं इसका जवाब नोटिस मिलने के 15 दिनों के अंदर नोटिस में अंकित पते पर भेजें । वकालतन नोटिस प्राप्त कर लेने के बावजूद भी प्रतिवादी नोटिस का जवाब वादी के अधिवक्ता के पास नहीं भेजें जिससे वादी को पूर्ण विश्वास हो गया की वादी के पूर्वज तकरारी जमीन को प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष के पूर्वज को बय नहीं किए हैं बल्कि वादी के पूर्वज तकरारी खाता 62 एवं 05 के संपूर्ण जमीन को प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष के पूर्वज से कुछ नगद रुपया लेकर तकरारी जमीन को बंधक के रूप में रख दिया होंगे। ”

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The plaintiff has stated at para-9 of the plaint that “यह कि यह भी स्पष्ट रूप से जाहिर है कि प्रतिवादी प्रथम पक्ष एवं प्रतिवादी द्वितीय पक्ष के पूर्वज अलग-अलग वादी के पूर्वज को 100/- रुपैया से नीचे अधिक से अधिक 99/- रुपैया + 99/- रुपैया ही कर्ज दिए होंगे व तकरारी जमीन को उपरोक्त रुपया के एवज में बंधक के रूप में रखकर जिसको वादी के पूर्वज कर्ज का अदायगी कर तकरारी जमीन को वापस हासिल नहीं किए । यदि प्रतिवादी के

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was based on assumptions and illusionary facts.

The entire facts about mortgage are based on "ought" not "is". Further, the plaintiff by clever drafting to dispel about any mortgage deed has stated that valuation of the mortgage would be less than Rs. 100/, plaintiff here also not sure about the valuation. Moreover, plaintiff has not stated when the mortgage was executed if any; he is not himself sure about the mortgage. It is admitted fact that the defendant is in possession of the suit land and plaintiff has deliberately filed the present suit for redemption of oral mortgage with a contention that "once a mortgagee always a mortgagee" though he himself has not sure about when the mortgage deed was executed, he is filing the present suit on the illusionary facts only.

Moreover, the entire averments in the plaint which constitute the cause of action is based on assumptions not the real facts. Further, plaintiff has tried to make the cause of action by sending the legal notices against the defendants.

Upon considering the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon does not disclose any cause of action in favour of the Plaintiffs.

Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, I am of the opinion that by clever drafting the plaintiff has failed to disclose the cause of action. Considering the decisions of Hon'ble Supreme

Continued.	Court in the case of T. Arivandandam (supra) and others, as stated above, and plaint failed to disclose the cause of action, the plaint is required to be rejected in exercise of powers under Order VII Rule 11 of the CPC. Considering the aforesaid facts and in the interest of justice, present petition of defendant is allowed, accordingly, Plaint is hereby rejected under Order VII Rule 7 (a) of CPC. Office Clerk is directed to consign the record to the record room as per rules. <i>Rahul Rahan</i> 31/03/23 Munsiff-II, Bhojpur at Arrah	
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