

Order under Exh.14
(Application under O.7 R.11)

Statement of the Application:-

1. Present application is moved at Exh.14 by defts. under **O.7 R. 11 of the Code of Civil Procedure, 1908** (for short "the Code") by stating that plaintiff has filed present suit without any cause of action. Suit is under valued. The suit property situated at village Vakha, Ta.Deodar, Dist.Banaskantha bearing old Revenue Survey No.116 (new Survey No.114 which is given another new Survey No.454) and it is of Account No.287. Suit property was given in mortgage with possession to the plaintiff on 20.2.1956 for 90 years. Out of the knowlege of defedants, plaintiff has obtained electricity connection illegally. By that way, he has breached condition of the mortgage. Plaintiff wants to grab the land. Hence, present suit deserves to be rejected under O.7 R.11 of the Code.

Submission of the Plaintiffs :-

2. At Exh.15, plaintiff has submitted the written reply for the said application and after refusing the allegations of the application, he has further submitted that cause of action is narrated clearly in the suit plaint. Court fee is also proper. Present application is filed by false motive. Hence, it is required to be rejected.

Documentary Evidences Produced by Plaintiffs :-

3. With the present suit, at Exh.4, plaintiffs have produced 14 documentary evidences. They are mainly registered mortgage deed of dtd.20.2.1956, village abstract form No.6, 8-A, 7 &12, receipts of electricity company, notices, pedigrees of parties and maps, etc. Howver, neither documetary evidences nor written statement is filed so far on record by the defendants .

Arguments :-

4. Heard both the Id.Advocates of both the parties. Ld.Advocate Mr.P.P.Gosai appearing for defendants and Ld.Advocate Mr.H.L.Prajapati on behalf of plaintiffs have argued as per above stated facts. Taken them into consideration. **None of them have argued on legal aspects of present application.**

Facts of Plaintiff :-

5. Present suit is filed by the plaintiffs in respect of the suit property as stated above. **By present suit, reliefs regarding electricity connection and injunction are asked. Cause of action is mentioned in para 7 of the plaint.** Suit property is mortgaged to the plaintiffs by the ancestors of defendant Nos.1 to 13. It is for 90 years. In this respect, suit property is in possession of the plaintiffs. As per the submission in the plaint, because defendants are working in pursuance to disconnect the electricity connection in the suit property, plaintiffs have filed present suit.

Reasons and Appreciation of Record:-

6. Present application under Exh.14 is moved under O.7 Rule 11 of the Code. But, the application does not bear any specific clause as mentioned under O.7 Rule 11. It is specifically provided under O.7 R.11 that plaint can be rejected under this provision only when plaint suffers from any legal infirmity as provided from clause (a) to (f). Not except that. But in present suit, none of the contents as provided in clause (a) to (f) are shown by the defendants, relying upon which the said provision can be taken into consideration for rejection of the plaint. Application contains only factual aspects. None of them are in respect of purely legal aspect. It is not shown in the application that how defenants are moving this application under O.7 R.11.

7. It is settled principle of law that at the time of deciding the application under O.7 Rule 11, court has to look into the record produced by the plaintiff only alongwith the suit and the entire scenario presented by the plaintiff on record at the time of filing the suit. No evidence of defendant is required to go through. However, if court finds it fit in the interest of justice and from the perusal of the plaint as well as documentary evidences, it transpires to the court that the plaintiff has suppressed material facts, it can verify and go through the documentary evidences and facts produced by the defendant too. In present case, defts. have not produced any documentary evidence till yet on record. Even written statement is not produced. When there is application before Court, it is duty of the Court to scrutinize the entire scenario of the case. Without that, no justifiable order can be passed.

8. In present case, looking to the facts submitted in the plaint, there seems no legal infirmity at present stage. Suit is filed for electricity connection and injunction as stated above. Facts mentioned in the plaint are of the nature that they cannot be decided without recording

the entire evidence. Without that no justifiable order can be passed. Present application, as stated above, neither bears any particular clause of O.7 R.11 nor it has any such content which can draw this court to understand that under which clause, this application is moved. Further, it is also clear that present suit is neither barred by want of cause of action or any other reason at this stage. Except clearly barred by law, each plaint requires to be decided on merit. When a litigant has come to court with a case, he has right to proceed with the suit in accordance with the law. Prior to that, he cannot be precluded. In present case, there is no reason to reject present suit under O.7 R.11. Present application does not have any legal base.

9. Looking to the facts and circumstances of the present suit, submissions of both the parties, documentary evidences produced by the plaintiffs and for the reasons and statements noted above, this Court is of the opinion that present application is filed with no legal cause . Neither it bears any substance. Hence, it deserves to be rejected. Therefore, following order is passed under Exh.14:-

O R D E R

- 1) Application at Exh.14 is hereby rejected.
- 2) No order as to costs.

Pronounced in the open Court today on 5th day of June, 2023.

Date:-05.06.2023
Deodar.

(Dr.Manjudevi Shardaprasad Pande)
Principal Sr.Civil Judge,
Deodar,District : B.K.
Code No.GJ:00860