

ORDER BELOW EXH.33
IN
SPECIAL CIVIL SUIT NO.26 OF 2024

(1) That, Defendant No.2 to 5 of the present suit have filed the present application under Order-7 Rule-11(d) of the Code of Civil Procedure, 1908 to reject the plaint of the plaintiff as the plaintiff is not entitled to file the present suit and also not entitled to obtain relief as prayed for.

(2) The Brief fact of the present application of Defendant No.2 to 5 is that, the suit property belongs to District Education Committee which is under the District Panchayat. Hence, plaintiff has no right to file such a suit and also to pray relief as prayed in the present suit.

(3) As against that, Plaintiff has not filed its written statement and consider its plaint as written statement of the present application.

(4) Heard learned Advocates for the respective parties at length. I have also gone through the present application submitted by Ld. Advocate for Defendant No.2 to 5. I have also perused the plaint of the present suit as a whole and also documents submitted along with the plaint.

(5) Ld. Advocate for the Defendant No.2 to 5 submitted that, the Gujarat Secondary Education Board has sanctioned Leelasha Education Trust to conduct school in the suit property and therefore Leelasha Education trust has the only right to file

the suit. Present plaintiff Shree General Sindhi Panchayat, Veraval has no right to file the present suit and the present plaintiff is not entitled to get relief as prayed for. Hence, plaintiff's suit barred by Order-1 Rule-8 of the Code of Civil Procedure, 1908. Further Ld. Advocate for Defendant No.2 to 5 submitted that, the present plaintiff has no locus to file the present suit against defendants. Further Ld. Advocate for Defendant No.2 to 5 submitted that the present plaintiff has not obtained authority of Leelasha Education Trust. Plaintiff has filed the present suit to abuse the process of the Court. Hence, Ld. Advocate for Defendant No.2 to 5 has requested to grant the present application and reject the plaint of plaintiff.

(6) Per Contra Ld. Advocate for the plaintiff denied all contentions raised by Ld. Advocate for the Defendant No.2 to 5 in his arguments and submitted that to decide an application under Order-7 Rule-11 the Court has to read only the plaint and documents submitted along with the plaint. He further submitted that, the Court has to read the Plaint as a whole. He Further submitted that, so far as the contention raised by Ld. Advocate for the Defendant No.2 to 5 is concerned whether the Plaintiff's suit is maintainable or not or relief prayed by the plaintiff may be granted or not is a matter of evidence and it cannot be decided at this stage before leading evidences of the parties of the suit. Defendant No.2 to 5 have filed the present application with the only purpose to prolong the present suit. Therefore Ld. Advocate

for the plaintiff has requested to dismiss the present application of Defendants with cost.

(7) That, Defendant No.2 to 5 in the present application contended that, the suit property belongs to District Education Committee which is under the District Panchayat. Hence, present plaintiff has no right to file such a suit and also to pray relief as prayed in the present suit. Further Defendant No.2 to 5 in the present application contended that, the Gujarat Secondary Education Board has sanctioned Leelasha Education Trust to conduct school in the suit property and therefore Leelasha Education trust has the right to file the suit. Present plaintiff Shree General Sindhi Panchayat, Veraval has no right to file the present suit and the present plaintiff is not entitled to get relief as prayed for. At this juncture it is desirable to cite judgment of Hon'ble Apex Court in the case of Gurdev Singh Vs. Harvinder Singh – reported as 2022 (0) AIJEL-SC 70471 which is as under.

(8) Hon'ble Apex Court in the case of Gurdev Singh Vs. Harvinder Singh – (Supra) has held as thus :-

“ The application preferred by the petitioner to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed by the Trial Court which has been confirmed by the High Court. **It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of**

powers under Order 7, Rule 11 of the CPC. The learned Trial court has rightly rejected the application under Order 7, Rule 11 of the CPC, which is rightly not interfered with by the High Court. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed.”

(9) Hence, as held by Hon’ble Apex Court in the case of Gurdev Singh Vs. Harvinder Singh – (Supra) and also looking to facts and circumstances of the present suit, I pass following order in the interest of justice.

// ORDER //

- The present application of Defendant No.2 to 5 is hereby ordered to be dismissed.
- No order as to any cost.

Signed and Pronounced in the Open Court this 24th Day of the Month March, 2025.

Date:24/03/2025

Veraval

(Chaitanyakumar Gopaldas Desai)

4th Additional Senior Civil Judge

Veraval

Code No. GJ 01211