



ORDER BELOW EX:-21

GJJM020095952021

1. The present application is filed by the defendant no. 1, 3 and 4 for rejection of plaint under Order-7, Rule-11 of Civil Procedure Code, 1908.
2. The short facts of the plaintiff case is that Plaintiff is residing with his mother Geetaben Jigneshbhai khetani in a rented house and plaintiff is a student. Further, Defendant No.1 is a grandfather of the plaintiff Defendant No.2 is father of the plaintiff and Defendant No. 3 & 4 is paternal uncle of the plaintiff. At present Plaintiff is residing with her mother. In the year 2008 plaintiff's mother left the suit property due to harassment of the defendants. Plaintiff's mother filed a domestic violation application in Surat and registered an FIR in Jamnagar Mahila Police Station. The Suit property is registered in the name of Defendant No.1 and as per the case of the plaintiff he is legal heir of Defendant No.1 and he has right, title and interest in this suit property. Further it is the case of the plaintiff that his father has left them since last 3 years ago and till today he has not taken care of the plaintiff and her mother. The defendants had refused to reside with them in the suit property. Defendant No.1 has given share of this suit property to defendant no. 3 and 4. The Defendant No.1 has not made any accommodation arrangement for plaintiff and her mother. Resultantly, Plaintiff and her mother have to live in a rented house and they are not in a condition to pay the rent. Furthermore, Plaintiff has anticipation that the defendants are trying to sell the suit property and remove the share of the plaintiff from the suit property. Therefore, the plaintiff has filed the present suit and prayed that Defendant may not be transferred the suit property

through any agent or anyone, gift, mortgage or in any other way and prayed for mandatory injunction on selling the suit property until the disposal of the suit. Further prayed to declare that plaintiff has legal right, interest, share in this suit property.

3. Upon service of summons the defendant no. 1, 3 & 4 appeared through advocate and defendant no. 2 has not appeared, therefore his right to produce a written statement has been closed. Further, defendant no. 1, 3 and 4 filed this application for rejection of plaint under Order-7, Rule-11 of Civil Procedure Code, 1908 *inter alia* they are seeking that present suit is liable to be rejected Order-7, Rule-11 of Civil Procedure Code, 1908 that this suit does not have the cause of action and further he submitted that presents suit is not tenable in the eyes of law. Further, he prayed that looking at the pleading and documents filed along with the plaint the defendant no. 1 is an independent owner and having lawful possession of the suit property and the plaintiff filed this suit as status of grandson and prayed that he has right, title and interest in the suit property but defendant no. 1 is alive and as per the Hindu Succession Act, 1956 property cannot be transferred unless the owner of the property dies intestate. Further, he has contended that the suit property is self acquired property and it cannot be transferred until the owner of the property dies intestate. As per section 6 of the Transfer of Property Act, 1882 spes succession is not permissible. Further, he submitted that looking to the facts of the present suit the defendant no. 1 is a grandfather of the plaintiff and at present he is alive, therefore plaintiff cannot seek right title and interest in the property which is self acquired by the defendant no. 1 and the present suit is not maintainable as the suit does not have cause of action and it is liable to be rejected under Order-7, Rule-11 of Civil Procedure Code.

4. Heard, Ld. Advocate K. D. Bhatt for Defendant No.1, 3 & 4, he submitted that the plaintiff has no locus to file this suit as her mother had already filed similar kind of suit earlier and amicably settled the dispute and withdrawn such suit, hence, present suit cannot be filed by the plaintiff. Further he submitted that this plaint doesn't have any cause of action against the defendant no.1 i.e grandfather. Defendant No. 1 is a sole owner of the suit property and he has right to transfer this property to anyone unless he dies intestate. Further, The suit property is a self acquired property which can be derived from Mark 3/1. Further, the plaintiff can seek the share from his father's property but here his father is absconding and her grandfather is also alive so that he cannot seek such kind of relief. Further he submitted that this is clever drafting done by the plaintiff and due to this, the present suit is not tenable and also this suit does not have any cause of action, hence it is liable to be rejected. Further learned advocate has referred section 8 of the Hindu Succession Act, 1956 which is as follows:

8. General rules of succession in the case of males.

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Thereafter, Ld. Advocate referred section 6 of the Transfer of Property, 1882 act which are as follows:

6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(emphasis supplied)

Further, Ld. Advocate referred to para 12 of the plaint and submitted that plaintiff has averred that defendant has not given any Inheritance right, Upon this pleading and looking to the section aforementioned, plaintiff cannot seek such right until the defendant no. 1 dies. Further, Ld. Advocate submitted that plaintiff has nowhere denied in the plaint that the defendant is not sole owner and the Suit property is ancestral property. Further he raised the question related to court fees and plaintiff does not averred anywhere in the plaint that this property cannot be transferred. Plaintiff has filed certain documents vide Ex-28 for support of his present application. Ld. Advocate of the plaintiff relied upon the following decisions of the Apex Court and Hon'ble High Court;

- A. Elumalai@Venkatesan & Anr Vs M. Kamala and Ors & Etc(2023 (0) AIJEL-SC 70334)
- B. Dahiben Vs Arvinbhai K Bhanushali (2020 (7) SCC 366)
- C. Chandrakant Kantilal Zaveri Vs Madhuriben Gautambhai (2011 (1) GLR 270).

5. Plaintiff himself remains present and declared that his reply filed vide exhibit-25 is to be considered as oral arguments of this application.

6. Heard both parties, perused records and proceedings. Before discussing merit and demerits of case, it would be relevant to refer to the provision of Order 7, Rule 11(a) of the C.P.C. and the scope thereof, Order 7, Rule 11 (a) of the C.P.C. is mandatory and if it is found that the Plaint does not disclose a cause of action, the Court has no option but to reject the Plaint. To find out whether a Plaint discloses a cause of action or not, the Court has to look only to the averments

made in the Plaint. When a Plaint is based on a document filed along with the Plaint, it can however be considered to ascertain if Plaint discloses any cause of action. *'Cause of action means every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to Judgment. The words Cause of Action means the whole bundle of material facts which are necessary for the Plaintiff to prove in order to entitle him to the reliefs claimed in the suit'*. In order to find out whether the Plaint discloses a cause of action or not, the averments made in the Plaint and documents annexed thereto should be scrutinised meaningfully and if on such scrutiny it is found that the Plaint does not disclose cause of action, it has got to be rejected in view of the provision of Order-7, Rule 11(a) of the C.P.C. When it is said that the Court should take into consideration whether the averments made in the Plaint disclose cause of action or not, it does not mean that the Court is precluded from applying the statutory provisions or case-law to the averments made in the Plaint.

7. In the light of the above made discussion, if we go through the facts of the suit, it is transpires that Plaintiff has filed a present suit mainly on the ground that he has right, title and interest in the suit property and he is legal heir of the defendant no. 1 and he has a share in the suit property. It is well settled law that at the time of rejecting the plaint the court has to only see the averment made in the plaint and document filed along with the plaint, other than these two things the court cannot look into any pleading or documents filed by the defendant. In the present case the defendant has filed documents vide Ex- 28 in support of his case for cause of action is not made out but those documents cannot be considered at this stage. Further, it is not disputed here that the suit property is registered with the name of defendant no.1 and Mark 3 / 1 clearly shows that the property is registered with the name of the

defendant no.1 . Further, if the cause of action arises or not it requires some evidence to look into, the plaint cannot be rejected at threshold only on the basis of the pleading but some evidence is also required. Therefore, a plaint disclosed cause of action, which is essentially a question of fact, which would require evidence in a trial. The Plaintiff relied on the judgement of the Apex court and Hon'ble High Court, but respectfully those judgment's facts and circumstances are different from the case on hand. Therefore, the ratio decided in those judgments would not be applicable to this case.

8. In the present case, the controversy has arisen in an application under Order 7 Rule 11 of CPC. Whether the matter comes within the purview of Order 7 Rule 11(a) of CPC is an aspect which must be gone into on the strength of the evidence on record. Looking to the averments made in the plaint, the question whether the plea raised by the Plaintiff this suit does not disclose any cause of action and it is barred under Section 8 of the Hindu Succession Act, 1956 and Section 6(a) of Transfer of Property Act, 1882 could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter requires full and final consideration after the evidence was led by the parties. It cannot be said that the plea of the plaintiff as raised on the face of it does not disclose any cause of action and plaint is liable to be rejected. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of **Hon'ble Supreme Court in Popat and Kotecha Property v. SBI Staff Assn. [Popat and Kotecha Property v. SBI Staff Assn., (2005) 7 SCC 510] : (SCC p. 515, para 10)**

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law.

Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

9. In the case of **Himashu Amritbhai Patel Versus Prachi D/o Bhagwat Naranbhai Patel (2018 (0) AIJEL-HC 240025)** Hon'ble Gujarat High Court held that;

“ 12. In the present case, reading averments made in the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said at this juncture that the said pleadings are not disclosing cause of action, and therefore, suit is barred under Order VII Rule 11(a) CPC. The essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of an application under Order VII Rule 11 CPC, the stand of defendants in application Ex. 37 or in the written statement would be altogether irrelevant.

13. In the case of Chhotanben and Anr. v. Kiritbhai Jalkrushnabhai Thakkar and Ors, reported in (2018) 6 SCC 422, it is held in para 15;

"15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane.

(emphasis supplied)

10. Hence, as per the above discussion and relying on the above observation of the Hon'ble Gujarat High Court wherein the view of

Chootanben's case is adopted, this court passes the following order in the interest of justice;

Order

- The Present application of the Defendant No. 1, 3 & 4 is hereby rejected.
- The Defendant No. 1, 3 & 4 shall bear the cost of the application.

Date: 04/03/2023
Place: Jamnagar

(P. P. Chauhan)
Additional Civil Judge
Jamnagar.
Judge Code: GJ01692