

REGULAR CIVIL SUIT NO.: 03 OF 2023.

ORDER BELOW APPLICATION - EXH.: 23:-

Present application is at the instance of Defendant Nos.: 1 to 3 and 9 to 11 invoking provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908, for rejection of plaint on the ground that suit is based on illusory cause of action as well as on the ground that suit is undervalued.

In their application they have inter alia stated that, present suit is filed stating that, compromise arrived at in **Special Civil Suit [SCS] No.: 05 of 2012** is illegal and for restraining them from transferring or assigning suit properties and suit is filed by paying stamp duty of Rs.100=00; as such suit is undervalued hence plaint of suit is liable to be rejected under Order 7 Rule 11 (b) of the Code of Civil Procedure, 1908. According to the applicant value of the properties involved in **SCS No.: 05 of 2012** is Rs. 91,00,000=00 as per document produced in that suit at **Mark-3/33**.

The applicants have further stated that, compromise was arrived at between parties, outside court, and suit was withdrawn. The applicants have further stated that, if compromise - **Exh.: 420** - produced in SCS No.: 05 of 2012 is considered then it is evident that, compromise was entered into in respect of three suit specifically mentioned viz. SCS No.: 05 of 2012, Regular Civil Suit No.: 22 of 2015 and SCS No.: 08 of 2012 as well as other proceedings pending between them. The said compromise is placed on record of this suit at **Mark-3/34**. According to them present Plaintiffs have suppressed material facts and have filed present suit with illusory cause of action; hence, plaint of the suit be rejected.

The other side is duly served with present application through their legal counsel. They have resisted present application by filing their reply at **Exh.: 27**. In their reply, Plaintiffs have inter alia contended that, application of the applicants is very vague and doubtful. Moreover document at **Exh.: 420 [Mark-3/34]** is described as family settlement however in fact same is compromise deed arrived at between parties to the suit; therefore, by misinterpreting said document they are seeking orders for rejection of plaint; moreover, except stating

that suit is undervalued they have nowhere stated as to under which law suit is barred therefore also present application is liable to be rejected. They have further contended that, as some of the Defendants have tried to trespass into suit land in absence of Defendants and while only lady members were there in the suit properties, they have lodged complaint with local police authorities on 30.01.2023 and 01.02.2023 and copies thereof is placed on record of this suit. They have further denied other facts narrated in the application and have contended that, present application be rejected with cost.

I have heard Ld. Counsel for the parties and perused record of this suit. I have also considered written arguments placed on record by the applicants at **Exh.: 29**. Having gone through record it is evident that, there were multiple proceedings between parties to the suit and some of them have been impleaded as party in some suit and not impleaded in other suit/s and in some proceedings present Plaintiffs are Plaintiff/s and in other proceedings they are Defendants. **Be it as it may be!**

It is settled position of law that, while considering application under Order 7 Rule 11 of Code of Civil Procedure, 1908, court of law is required or under obligation to decide it only on the basis of pleadings contained in the plaint as well as document placed on record in support of plaint as such defense of the other side cannot be taken into consideration while deciding application under Order 7 Rule 11 of the Code of Civil Procedure.

The main contention raised by the applicants is twofold, firstly on the ground of insufficient court fees and secondly on the ground of no cause of action or illusory cause of action. So far as first contention is concerned, question of court fees is between Plaintiff and State and/or Court; therefore, though Defendants can bring it to the notice of court but same cannot be sole basis for rejection of plaint. On going through pleadings, prima facie, it is found that, as suit is for declaration and permanent injunction, court fees paid by Plaintiffs appear to be just and proper; however, it is always for scrutiny by court fees inspector appointed by the State Government and if any reference is made by court fees inspector and received by this court, then, this court will pass

appropriate orders thereon, which shall be binding on Plaintiffs, subject to right of appeal, if any. As such, first contention raised, prima facie, appears to be baseless. As such, if despite order passed by this court, Plaintiffs fails to amend his plaint and pay requisite fees, as per order, then, this court can suo motu pass order for rejection of plaint as provided under Order 7 Rule 11(b) of the Code of Civil Procedure, 1908; as such this court is not powerless.

So far as second contention is concerned, on going through plaint in the light of the documents placed on record and relied upon by the Plaintiffs, it is found that, cause of action for filing of suit is sufficiently narrated in the plaint and facts that, some of the Defendants have tried to trespass into suit property, during absence of Plaintiffs as contended by the Plaintiffs in their reply, gets support from documents at **Mark-20/1 to 20/2** and **Mark-26/1**. From said documents it is prima facie seen that, as some of the Defendants of present suit, have tried to trespass into suit property in possession of the Plaintiffs, on the strength of their complaint, preventive measure/action is taken by local police authorities and police authorities have advised them to take recourse to civil court for their civil rights in respect of their ancestral property, as such, present suit cannot be said to be cause less and/or suit with illusory cause of action; inviting rejection of plaint as provided under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908.

For the reasons assigned herein above, following order is passed:

-::: ORDER :::

Application is rejected with no orders as to costs.

Place: Tapi @ Vyara
Dated: 09.02.2024

PRINCIPAL SR. CIVIL JUDGE,
TAPI @ VYARA [**GJ-00459**]