

KASM610003012018



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT SAGAR.**

Present: SRI. NATARAJ YADAV .S, M.B.A., LL.B.,
Prl. Senior Civil Judge & J.M.F.C.,
Sagar.

Dated, this 20th day of November, 2023.

OS No. 21/2018.

PLAINTIFF :

Smt. Arpana Hamsa w/o
Vinaya Hegde, a/a 35 years,
R/at No.865, 9th cross,
Gnanabharathi B.D.A extension,
R.V.Vidyanikethana post,
Kengeri Upanagara,
Bengalore-560060,
Mobile No.9480123085.

(By pleader **Sh. K.N.Sreedhara**)
- Versus -

DEFENDANTS:

1. Smt. Vishalakshi Raghupathi Bhat
w/o Sreekantha Hegade,
a/a 46 years,
R/at No.675/9, 12th cross,
4th main road, Near Maruthi school,
Shreyas colony, J.P.Nagar,

7th stage, Bangalore-560078.
Mobile No.8147001151 (08026-852733)

2. Sreekantha V.Hegade s/o
Venkataramana Hegade,
a/a 52 years,
R/at 675/9, 12th cross,
4th main road, Near Maruthi school,
Shreyas colony, J.P.Nagara,
7th stage, Bangalore-560 078,
Mobile No.8147001151 (08026-852733)

3. Smt. Indira S Naika s/o
Jagadeesha S.Naika, w/o
Subbanna Naika, a/a 80 years,
R/at Anandapura,
Sagar taluk.

4. Aravinda J Naika, s/o
Jagadeesha S.Naika, major,
R/at Sasyodhyana, Shakthinagara,
Kuvettu village,
Guruvayinakere,
Belthangadi taluk.

(D.1, **By Sh. Ramesh H.S.**, Advocate,
D.2, **By Sh. M.S.Gowdar.**, Advocate,
D.3, D.4, **By Sh. Santhosh Kumar S**, Advocate,

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PARTIES TO I.A.I

Applicant/ Defendan : Srikantha V.Hegade (D.2)

V/S

Opponent/Plaintiff : Smt. Aparna Hamsa (Plaintiff).

PARTIES TO I.A.III

Applicants/ Defendants :Mrs. Indira S.Nayak (D.3) and
Mr. Aravind J Nayak (D.4.

V/S

Opponent/Plaintiff: Smt. Aparna Hamsa (Plaintiff).

COMMON ORDERS

This order of mine will dispose off applications under order 7 rule 11 of CPC filed by the defendant No.2 on 09.08.2018 and defendant No.3 and 4 dated 12.08.2019 for dismissing the suit against them.

2. **Brief facts of the case are that**, plaintiff has filed the present suit for recovery of money of Rs.36,00,000-00 with interest at the rate of 10% per annum and pendentia-lite, future interest at 10% per annum and expenses of the suit.

3. The defendant No.2 to 4 have filed applications under consideration for dismissing the suit against them on the averments that, there was no privity of contract for lending money between the plaintiff and defendant No.2 to 4. The defendant No.1 only borrowed the money from the plaintiff and without going to correctness of the averments, it is

clear that the defendant No.2 to 4 have no way concerned with the transaction and there is no cause of action against these defendants. It is further averred that, therefore the suit cannot proceed against the defendant No.2 to 4 and prayed for rejection of the plaint under order on Order 7 rule 11 of CPC against defendant No.2 to 4.

4. On the other hand, plaintiff has filed the Reply to the said applications and contested the same on the ground inter-alia that, the applications are devoid of merits and defendants are intentionally delaying the present matter. It is further averred that, defendant No.2 is the husband of defendant no.1 and he had participated in all dealings entered into between the plaintiff and defendant No.1 and also forced the plaintiff to lend the money to the defendant No.1 by way of deposit through her bank account and she was also present at the time of request made by the defendant no.1 and she also jointly requested for lending of money. He also deceived the plaintiff for making payment in favor of defendant No.1 and other defendants have withdrawn the amount credited to the account of the defendant No.1. All these defendants had hatched conspiracy and defrauded the plaintiff. All of them have illegally retained the amount of Rs.36,00,000-00 of the

plaintiff and they are jointly liable to repay the said amount to the plaintiff along with interest as claimed in the suit and prayed for dismissal of the application under consideration with cost.

5. I have heard the Ld. Counsels for parties and perused the records.

6. The Ld. Counsel for the defendant No.2 to 4 have submitted that, there is no privity of contract between them and plaintiff. Plaintiff has not lent any money to them, only vague allegation is made in the plaint that defendant No.2 had joined the defendant No.1 from request the plaintiff to lend the money. So their names are liable to be deleted from the array of the parties and they are no more necessary parties. They have also submitted that, since plaintiff has impleaded the defendant No.2 to 4 unnecessarily, so the plaint is liable to be rejected under order 7 rule 11 of CPC against the defendant No.2 to 4 for want of cause of action against them.

7. Whereas, the Ld. Counsel for the plaintiff has submitted that, defendant No.2 is the husband of defendant No.1 and plaintiff was allude by the defendant no.2 and the plaintiff has clearly stated in the plaint that, the defendant No.2 had

joined the defendant No.1 at the time of transaction. The other defendants though not directly contacted the plaintiff for lending money, they have hatched conspiracy along with defendant No.1 and 2 and they have withdrawn the amount deposited to the account of the defendant No.1 and thus, they are liable to repay the said amount to the plaintiff. The plaintiff has used the words "Defendants" in the averment of the plaint and she has also submitted that defendant No.2 to 4 are necessary parties for proper adjudication of the case. So their names cannot be strike off from the array of the parties. He has also submitted that, at the time of disposal of the application Under Order 7 Rule 11 of CPC, the averments in the plaint are germane and from the averments made in the plaint, it is quite clear that valid cause of action has arisen to plaintiff to sue defendant No.2 to 4 in addition to defendant No.1 and prayed for dismissal of the application under consideration.

8. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and perused the records.

9. Perusal of the records shows that, plaintiff had filed the present suit for recovery of Rs.36,00,000-00 which is lent to the defendant No.1 and 2 with interest at the rate of 10%

per annum and pendent-lite, future interest at the rate of 10% per annum, cost and expenses of the suit.

10. The Ld. Counsels for defendant No.2 to 4 have submitted that, since there was no privity contract between the plaintiff and defendant No.2 to 4, but they are no more necessary parties and their names are liable to be struck off from the array of the parties and plaint is liable to be rejected qua the defendant No.2 to 4 are concerned, but the Ld. counsel for the plaintiff has submitted that, defendant No.2 is the husband of the defendant No.1 and he has joined the defendant No.1 in all the transactions., in fact he was physically present when the amount was deposited by the plaintiff and he also deceived the plaintiff for making payment in favour of the defendant No.1 and also he assured for repayment of the said amount. So in my considered opinion, name of the defendant No.2 cannot be deleted from the array of parties from the averments made in the plaint. It is quite clear that averments are made against the defendant No.2, so his name cannot be deleted from the array of the parties or plaint is liable to be rejected qua defendant No.2. In the same way Ld. Counsel for the plaintiff has submitted that though the defendant No.3 and 4 have not approached the plaintiff for demanding the

money, they have hatched the conspiracy with the defendant No.1 and 2 cheat the plaintiff subsequent to the deposit of the amount to the account of the defendant no.1 through RTGS, but the defendant No.3 and 4 had withdrawn the said amount from the account of the defendant No.1 and it used for their personal use. As the plaintiff as all of them had misused the said fund, they are jointly liable to repay the said amount to the plaintiff along with interest and thus, they are arrayed as defendant No.3 and 4 in the present suit. So in the considered opinion, name of the defendant No.3 and 4 also cannot be deleted from the array of the parties and from the averments made in the plaint, it is quite clear that the specific averments also made against the defendant No.3 and 4 and since the Ld. Counsel for the plaintiff has submitted that defendant No.3 and 4 even are not parties to the transaction between the plaintiff and defendant No.1, but he has stated that, they hatched conspiracy with the defendant No.1 and 2 and cheated the plaintiff and withdrawn the said amount from the account of the defendant No.1 and thus, they are also liable to repay the suit claim amount jointly with the defendant No.1 and 2. So their names cannot also be deleted from the array of the parties. In my considered opinion and in the given circumstances, the name of the

defendant No.2 to 4 cannot be stricken off from the array of the parties and it is settled principles of law that at the time of disposal of the application under order 7 rule 11 of CPC, the averments made in the plaint are looked into.

11. It is settled principle of law that, at the time of disposal of application U/O 7 rule 11 CPC, only the facts mentioned in the plaint are required to be seen and the defence set up by the defendant cannot be looked into.

12. It is also settled principle of law that, the averments made in the plaint are the GERMANE and the cause of action has to be culled out on the conjoint reading of all the paragraphs of the plaint.

13. Their Lordship of Supreme Court of India in case **Bhau Ram v/s Janak Singh & ors., Civil Appeal No.5343 of 2012**, is pleased to hold that:- "In order to ascertain an answer for the above question, we have to consider whether the application under order 7 rule 11 of CPC filed by the defendant can be decided merely on the basis of the plaint and whether the other material filed by the defendant in support of the application can also be looked into. The trial court allowed the application of the appellant/defendant no.1 filed u/o 7 rule 11 of CPC on the

ground that the plaint was barred under the provisions of order 9 rule 8 and 9 of CPC and order 23 rule 1(3) & (4)(b) of CPC. The said order of the trial court was set aside by the first appellate court on the ground that the trial court had taken the pleas from the written statement of the defendant which is not permissible under order 7 rule 11 of CPC and the High Court in the second appeal confirmed the judgment of the first appellate court.

It is relevant to point out the findings of the trial court particularly with reference to the suit no. 424/1 of 99/97 which was dismissed for default had been restored by the trial court even at the time of filing of the application by the defendant under order 7 rule 11 of CPC and it is also brought to out notice that the said proceedings are going on. In view of the same, the provisions of order 9 rule 8 and 9 of CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the present suit are with regard to different properties. For the same reasons, the provisions of order 23 rule 1(3) and 4(b) of CPC are not applicable.

The law has been settled by this court in various decisions that while considering an application u/o 7 rule 11 of CPC, the court has to examine the averments in the plaint and

the pleas taken by the defendants in its written statements would be irrelevant. Vide **C Natrajan v/s Ashim Bai and another, (2007) 14 SCC 183, Ra Prakash Gupta vs Rajiv Kumar Gupta and others (2007) 10 SCC 59, Hardesh Ores (P) Ltd vs Hede and Company, (2007) 5SCC 614, Mayar (H.K) Ltd. And others vs Owners & Parties, Vessel M V Fortune Express and others, (2006) 3SCC 100, Sopan Sukhdeo Sable and others vs Assistant Charity Commissioner and others , (2004) 3SCC 137, Saleem Bhai and others vs State of Maharashtra and others, (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this court in **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(6) JT 149.**"**

14. Their Lordship of Hon'ble Supreme Court in case **The Church of Christ Charitable v/s M/s Ponniyamman Education** 2012(8) SCC 706, is pleased to hold that:–
 "the appellant herein, as the first defendant before the trial judge, filed application u/o 7 rule 11 of CPC of the plaint on the ground that it does not show any cause of action

against him, at the foremost, it is useful to refer the relevant provision.

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under order 7 rule 11 of CPC can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

This position was explained by this court in **Saleem Bhai & ors vs State of Maharashtra and others ,(2003) 1SCC 557**, in which, while considering Order 7 rule 11 of CPC, it was held as under:– "9. A perusal of Order 7 rule 11 of CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power u/o 7 rule 11 of CPC at any stage of the suit - before

registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses(a) and (d) of Rule 11 of order 7 of CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore a direction to file the written statement without deciding the application u/o 7 rule 11 of CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court...".

It is clear that in order to consider order 7 rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that 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.

While scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is

necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action" and cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

15. Their Lordship of Hon'ble Supreme Court of India in case **D Ramachandran V/s R V Janakiraman and others AIR 1999 SC1128:(1999) 1SCR 983:(1999) 3SCC 267:JT 1999 (2) SC94: (1999)1 SCALE 693** has held that:- "We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection; the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or triable issue as such. The court can not probe into the facts on the basis of the controversy raised

in the counter. Under order VI, rule 16, the court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the rule. Hence striking out parts of the pleading in this case was not at all justified.

On the other hand, Rule 11 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this rule. The application filed by the first respondent in O:A 36/97 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of O.VII, R.11(a) CPC the court cannot dissect the pleading into several parts and consider

whether each one of them discloses a cause of action. Under the rule, there cannot be a

partial rejection of the plaint or petition. **See Roop Lal Sathi v. Nachhattar Singh Gill (1982) SCC 487.** We are satisfied that the election petition in this case could not have been rejected in limine without a trial.

Tilak Raj Bhagat vs Ranjit Kaur & Ors. 2012 VAD(DELHI) wherein it has been held that it may be worthwhile to mention here that while considering an application under order 7 rule 11 of CPC, the court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff."

16. So, keeping in mind the law laid down by their Lordship of Supreme Court as discussed above, I am of the considered view that name of the defendant no.2 to 4 cannot be struck off from the array of the parties and in view of the averments made in the plaint, the plaint cannot be rejected qua defendant No.2 to 4. So, the applications

filed by the defendant no.2 to 4 under order 7 rule 11 of CPC, are liable to be dismissed, being devoid of merit. Consequently, I proceed to pass the following;-

ORDER

**I.A.No. I and III filed by the applicant/
defendant no.2 to 4 under order 7 rule
11 of CPC, are hereby be dismissed.**

**No order as to the cost in view of the
relationship between the parties.**

Put up for Issues by 05.12.2023.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 20th day of November, 2023.)

(NATARAJ YADAV S)
Prl. Senior Civil Judge & J.M.F.C
Sagar.